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PREFACE.

THE following pages profess to give some account of the principal judicial decisions which have been pronounced during the last fifty years upon questions relating to the rites, ceremonies, ornaments, and decorations of the Church of England.

These questions have arisen as a result of the movement begun at Oxford in the early part of the fourth decade of this century, which had for its primary object the revival of Catholic doctrine and practice in the Church. The movement appealed to antiquity, and many of those who took part in it naturally desired, along with ancient doctrine and ancient practice, to restore as much as possible of the beauty and symbolism of ancient worship and decoration. How far such a restoration was compatible with the Law of the Church as declared in her authoritative formularies, has been the question agitated in each of the cases which are the subject of this book. And when it is considered that for the decision of this question it has been usually necessary to ascertain the construction of documents two or three hundred years old, many of which had wholly or in part been for many years neglected or forgotten, and further, that on both sides the changes sought to be introduced were (rightly or wrongly) associated with doctrines deemed to be of vital importance, neither the variance of judicial opinion which has been manifested, nor the ardour with which litigation has been pursued, will excite much surprise.

The difficulties attending the discussion of these matters have been further greatly increased by controversies respecting the authority and constitution of the Courts before which they have been brought. With these controversies (which in great measure deal with topics rather constitutional than legal) this book does not concern itself. Neither does it make any pretence to be a general treatise on the subjects with which it deals: its aim is merely to describe the decisions which have in fact been pronounced upon them, with such short explanations and comments as seem desirable in order to enable the reader to appreciate the points at issue.

The plan adopted has been to go through the various questions which have been litigated, and to consider under each the decisions which have been pronounced upon it. The purport of those decisions has been fully explained, and abstracts of all the principal judgments given, so that it is hoped that the book may supply to those who have not easy access to a law library an accurate summary of cases, the full reports of which are dispersed over many volumes. With a like object the material passages of the chief documents referred to have been extracted and given in full.

The cases treated of form a somewhat interesting chapter in the judicial history of the country; but more especially, it seems that in the confusion which now surrounds these questions anything which diffuses accurate knowledge of what has actually been decided upon them is likely to be of some value. To promote such knowledge is the object of this little book, and I venture to hope that it has been pursued at any rate honestly and carefully. G. J. T.

TEMPLE, *Nov.* 1893.

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MODERN DECISIONS ON RITUAL

AND

KINDRED SUBJECTS.

CHAPTER I.

THE COMMUNION TABLE OR ALTAR, WITH ITS ADJUNCTS AND FURNITURE.

A.—MATERIAL AND CONSTRUCTION OF THE TABLE.

THIS question arose and was determined in the cases of *Faulkner* v. *Litchfield*,[1] and *Westerton* v. *Liddell*.[2] The controversy in both these cases was as to what constitutes a table within the meaning of the rubrics in the Prayer Book, and in particular whether such table must not be wooden and moveable.

The principal historical facts considered material in these cases are as follows:—

Before the Reformation altars were of stone, fixed and immoveable, and usually in the form of the tombs of the martyrs.[3]

[1] 1 Robertson's Reports, p. 184.
[2] Moore's Report, London, 1857.
[3] Per Sir H. J. Fust, *Faulkner* v. *Litchfield*, at p. 218.

In the Prayer Book of 1549 (commonly known as the First Book of Edward VI.) the word "altar" is several times used in the rubrics in the Communion Service to describe the holy table. In the second of the rubrics at the beginning of the service the curate is directed to advertise an open and notorious evil liver "not to presume to come to the Lord's table until he have openly declared himself to have truly repented;" so in the next rubric the words are "not suffering them to be partakers of the Lord's table." But the service itself is introduced by the words "The priest, standing humbly afore the midst of the altar, shall say," &c. Shortly afterwards, "Then the priest, standing at God's board, shall begin," &c. Afterwards the priest is directed to set "both the bread and wine upon the altar." So before the Prayer of Consecration, "turning him to the altar;" and after it, "turning still to the altar." Before the Prayer of Humble Access the direction is "turning him to God's board." In the first rubric at the end of the service the priest is directed on Wednesdays and Fridays after the Litany "to say all things at the altar." It will thus be seen that "altar," "table," and "board" are used indifferently, though "altar" occurs most frequently.

Bishop Ridley, in 1550, enjoined the curates, churchwardens, and questmen of his diocese to erect and set up the Lord's board after the form of an honest table, decently covered, in such place of the quire or chancel as should be thought most meet;[1] and in King Edward VI.'s Journal of his Reign, printed in Burnet's History of the Reformation,[2] there occurs the entry for November 19th, 1550: "There were letters sent to every

[1] 1 Card. Doc. Ann. p. 94.
[2] Vol. ii. Part ii. p. 30 (ed. 1816).

Bishop to pluck down the altars." The letter to Ridley, dated the 24th of November (which is no doubt a specimen of these),[1] is printed in Cardwell's Documentary Annals.[2] It requires the Bishop to give orders throughout his diocese "that with all diligence all the altars in every church or chapel, as well in places exempted as not exempted, within your said diocese, be taken down, and instead of them a table to be set up in some convenient part of the chancel."

In the Prayer Book of 1552 (commonly known as the Second Book of Edward VI.) the word "altar" never occurs, but always "table" or "board," nor has the word "altar" been introduced into any of the later editions of the Prayer Book.[3] In the Book of 1552 the

[1] See the judgment of the Judical Committee, *Liddell* v. *Westerton*, at p. 182.

[2] Vol. i. p. 100.

[3] As to the use of the word "altar," the 7th of the Canons of 1640, which provides for the position of the communion table at the east end of the church, contains these words: "And we declare that this situation of the holy table doth not imply that it is, or ought to be esteemed a true and proper altar whereon Christ is again really sacrificed; but it is, and may be called an altar by us in that sense in which the primitive Church called it an altar, and in no other." Dr. Stephens, in his annotated edition of the Prayer Book, vol. ii. p. 1096, says: "It" (the term altar) "has been constantly used in the Coronation Service, which has been revised by successive Primates of the Church of England, and has received the sanction of the whole Church and Realm, assembled at that solemn ceremony. Were the use of the word wrong in an ordinary sense, of course it would be so at this particular service; and, as before observed, it has been employed without scruple by the revisers of our Liturgy, besides being constantly used by many divines before them, since our Reformation, convertibly with 'holy table,' in conformity to ancient and primitive usage." It is curious that Parliament in 59 Geo. 3, c. 134, s. 6, and 2 & 3 Gul. 4, c. 61, uses the term "altar" for the holy table, and moreover that in both these Statutes the altar is treated as being immoveable, the words being "All such chapelries shall . . . be subject to the jurisdiction of the Bishop and Archdeacon within whose diocese and

service is preceded by a rubric substantially the same as that in the present Prayer Book: "The Table, having at the Communion time a fair white linen cloth upon it, shall stand in the body of the church or in the chancel where morning prayer and evening prayer be appointed to be said."

In 1559 Queen Elizabeth issued Injunctions "concerning both the clergy and laity of this realm." They contained the following passage as to tables:[1] "Whereas Her Majesty understandeth that in many and sundry parts of the realm the altars of the churches be removed and tables placed for the administration of the holy sacrament according to the form of the law therefore provided; and in some other places, the altars be not yet removed upon opinion conceived of some other order to be taken by Her Majesty's visitors; in the order whereof, saving for an uniformity, there seemeth no matter of great moment, so that the sacrament be duly and reverently ministered; yet for observation of one uniformity through the whole realm, and for the better imitation of the law in that behalf, it is ordered, that no altar be taken down, but by oversight of the curate of the church, and the churchwardens, or one of them at the least, wherein no riotous or disordered manner to be used. And that the holy table in every church be decently made, and set in the place, where the altar

archdeaconry the altar of such chapel shall be locally situate," in the Act of George III.; and "Every such chapel and district, whether situated wholly or in part within any exempt or peculiar jurisdiction, shall be subject to the jurisdiction of the Bishop and Archdeacon within the limits of whose diocese and archdeaconry the altar of any such chapel shall be locally situate," in the Act of William IV.

[1] 1 Card. Doc. Ann. at p. 233.

stood, and there commonly covered, as thereto belongeth, and as shall be appointed by the visitors, and so to stand, saving when the communion of the sacrament is to be distributed; at which time the same shall be so placed in good sort within the chancel as whereby the minister may be more conveniently heard of the communicants in his prayer and ministration, and the communicants also more conveniently and in more number communicate with the said minister. And after the communion done, from time to time the same holy table to be placed where it stood before."

In the Advertisements of 1566,[1] the parish is ordered to "provide a decent table standing on a frame for the communion table."

The Canons of 1571 (which were passed by Convocation, but never received the Queen's assent) contain the following:[2] [Aeditui ecclesiarum] "curabunt mensam ex asseribus composite junctam quae administrationi Sacrosanctae Communionis inserviat."

The 82nd of the Canons of 1604 is as follows: "Whereas we have no doubt, but that in all churches within the realm of England, convenient and decent tables are provided and placed for the celebration of the holy communion, we appoint, that the same tables shall from time to time be kept and repaired in sufficient and seemly manner, and covered, in time of divine service, with a carpet of silk or other decent stuff, thought meet by the ordinary of the place, if any question be made of it, and with a fair linen cloth at the time of the ministration, as beseemeth that table, and so stand, saving when the said holy communion is to be administered;

[1] 1 Card. Doc. Ann. at p. 326.
[2] 1 Cardwell Synodalia, at p. 123.

at which time the same shall be placed in so good sort within the church or chancel, as thereby the minister may be more conveniently heard of the communicants in his prayer and ministration, and the communicants also more conveniently, and in more number, may communicate with the said minister," &c.

In *Faulkner* v. *Litchfield* a faculty had been granted in the Consistory Court of Ely confirming the erection of a stone communion table in the Church of the Holy Sepulchre at Cambridge. The table or altar was of great weight, and embedded in the floor of the chancel. There was some dispute as to whether or not it was affixed to the wall of the church. An appeal from the decree for a faculty was brought in the Court of Arches, and was argued in December 1844. Judgment was given by Sir Herbert Jenner Fust, the Dean of the Arches, on the 31st of January, 1845. The following is a short abstract of the reasoning of the judgment so far as it affects the present question:—

The word "table" in the rubrics must be taken in its usual and popular meaning, which is a moveable wooden article, unless it can be shewn that when first inserted in the rubrics it contained another meaning, and that it bears that meaning in the present rubrics. There is no doubt that the change of nomenclature from "altar" to "table" was intended to mark a real difference. If this is not a table, it matters not whether it be an altar or not; however, in fact, before the Reformation altars were of stone, and fixed. Such was the description of altar which was to be got rid of at the Reformation, in order to remove as far as possible the superstitions which were connected with the Mass. Accordingly the word "altar" was wholly omitted in the rubrics of the

Second Book of Edward VI. In the rubric as to the bread in that book ("it shall suffice that the bread be such as is usual to be eaten at the table with other meats"), "table" clearly means a common table used for meals, and presumably the word has the same meaning in the other rubrics. It is clear that in 1550 there was a general order for the setting up of tables instead of altars; unless some alteration has taken place, the same interpretation must be put on the word "table" as was applied to it by Edward VI. The Injunctions of 1559 shew plainly that the table was to be moveable. What their authority was is immaterial; they were acted on immediately. Throughout Elizabeth's reign the Visitation Articles of the Bishops contain inquiries whether altars have been removed and tables substituted.[1] The 82nd Canon of 1604 necessarily involves the moveability of the table. Laud ordered the tables to be moved out of the body of the church to the upper end of the chancel, and there to be enclosed with rails. The disputes which arose with regard to this, and particularly the controversy between Bishop Williams of Lincoln and the Vicar of Grantham in 1637,[2] shew conclusively that at that time the tables were moveable. Cases where it was ordered that the table should stand in a particular position as a matter of convenience in no way impugn this conclusion. Was then any alteration intended in 1662 when our present

[1] E.g. in 1576, Archbishop Grindall inquires, "Whether in your churches and chapels all altars be utterly taken down and clean removed, even unto the foundation, and the place where they stood paved, and the wall whereunto they joined whited over, and made uniform with the rest, so as no breach or rupture appear": 1 Card. Doc. Ann. 398.

[2] The facts of this controversy are given in detail in the judgment.

Prayer Book was set up? There is no indication of it. The table or altar is not an ornament, and so cannot be supported by the "Ornaments Rubric"[1] as having been in use in the second year of Edward VI. The matter is one not of discretion but of law, and I am obliged reluctantly to reverse the decision of the Chancellor, on the ground that a structure like the present is not a communion table within the meaning of the rubric. I do not go so far as to admonish the churchwardens to remove it; I merely refuse to confirm the sentence of the Court below.

In the cases of *Westerton* v. *Liddell* and *Beal* v. *Liddell*, which (as for the most part the same points were raised in both) were heard together,[2] among the matter complained of were the tables or altars of the two churches which were in question, namely, St. Paul's, Knightsbridge, and St. Barnabas', Pimlico. The table at St. Paul's was of wood highly carved, very massive, and not easily moveable. The table at St. Barnabas' was of stone, though not a solid mass of stone.

The suits were instituted in the Consistory Court of London, with the object (among others) of obtaining the removal of these tables as illegal. They were argued on the 24th and three following days of July 1855. On the 5th of December in the same year judgment was delivered by Dr. Lushington, the Judge of the Court. He observed that he considered the decision in

[1] "And here is to be noted that such ornaments of the church and of the ministers thereof, at all times of their ministration, shall be retained and be in use, as were in this Church of England by the authority of Parliament in the second year of the reign of King Edward the Sixth."

[2] These cases will generally be referred to as *Westerton* v. *Liddell*, without distinction between them. In the Privy Council the names were reversed (*Liddell* v. *Westerton*).

Faulkner v. *Litchfield* to be binding on him, and that therefore the only question for him was whether the tables complained of were illegal upon the principles therein laid down, namely, that a legal communion table should not be of stone, and must be moveable. As to the wooden altar of St. Paul's, he said :[1] "As to material, it is in accordance with law. As to moveability, it certainly is very massive, and could not be moved with facility; but I should be very reluctant to press the point of moveability to the utmost extent to which it could be carried, the more so as in these days the custom of moving the table has altogether, as I believe, ceased. If the table be of wood, and capable of being moved, though with some difficulty, I do not conceive that I am bound by the judgment I have cited[2] to pronounce it contrary to law. With respect to its shape, though I wholly disapprove of the making of any communion table to resemble a tomb, or any imitation of any such practice, yet I do not think that shape so prominent as to call for the interposition of legal correction, and I am most unwilling to interfere save where my duty is imperative." As to the stone altar of St. Barnabas', he said:[3] "I apprehend that the judgment of *Faulkner* v. *Litchfield* has pronounced all tables of stone to be illegal. In conformity with that judgment, and in obedience to it, I must pronounce that the altar in St. Barnabas' Church is not authorized by law. It is right that I should add that my own opinion as to the law entirely concurs with the judgment of Sir Herbert Jenner Fust." A monition was accordingly

[1] At p. 27 of Moore's Report.
[2] I.e. *Faulkner* v. *Litchfield*.
[3] Page 28 of the Report.

issued to the churchwardens of St. Barnabas' to remove the structure of stone used as a communion table, and to substitute a moveable table of wood. Dr. Lushington explained that Sir Herbert Jenner Fust's refusal to issue a like monition in *Faulkner* v. *Litchfield* was due to the form of proceeding in that case, there being no prayer for a monition, but merely an appeal from a decree granting a faculty; and expressed an opinion that where the proceedings were appropriate, and a Judge came to the conclusion that a thing complained of was illegal, he had no choice but to decree its removal.

There was no appeal by the promoters of the suits, but Mr. Liddell appealed to the Arches Court against (among other things) the decision as to the stone altar of St. Barnabas'. On the 20th of December, 1856, Sir John Dodson, the Dean of the Arches, delivered judgment, declaring his opinion that Dr. Lushington had rightly applied the law laid down in *Faulkner* v. *Litchfield* to the altar of St. Barnabas', and that the decree appealed from was right.

Mr. Liddell then appealed to the Privy Council in both suits. The appeals were argued on the 9th, 10th, 11th, 12th, 13th, 14th, and 16th of February, 1857. The judgment of the Judicial Committee was delivered on the 21st of March following by Mr. T. Pemberton Leigh.[1] With regard to the altar of St. Barnabas' the judgment examines the authorities and arguments upon which the decision in *Faulkner* v. *Litchfield* was grounded, and approves the conclusion drawn from them

[1] Afterwards Lord Kingsdown. The members of the Judicial Committee who sat on this occasion were Lord Cranworth, Chancellor, Lord Wensleydale, the Right Hon. T. Pemberton Leigh, Sir John Patteson, Sir William H. Maule, the Archbishop of Canterbury (Sumner), and the Bishop of London (Tait).

in that case.[1] Their Lordships were clearly of opinion that the stone structure at St. Barnabas' was not a communion table within the meaning of the Canons and rubrics. As to the question whether the judgment of the Consistory Court was correct in ordering, not merely the removal of the stone structure, but also the substitution of a wooden table, the Committee state that at first they were in some doubt, but that on further consideration they were satisfied that the decree was correct, the law having prescribed the material of the table. This opinion is based on the natural meaning of the word "table," the fact that moveability was required, the direction in the Canons of 1571 (which, though not binding for want of the royal assent to them, were probably generally acted upon) shewing what was understood at the time to be the proper material of the table, and the absence of anything of contrary import in the Canons of 1604.

Complaint was subsequently made to the Judicial Committee that the monition had not been obeyed. The monition had ordered the placing in the church of "a flat moveable table of wood." The disobedience alleged consisted in the fact that a moveable ledge of wood, used to support candlesticks and vessels, had been put on the table. It was admitted that in other respects the table complied with the monition. Before the administration of the communion this ledge was moved, so that the linen cloth might be placed on the table, and was then replaced. The complaint made was that this ledge was an imitation of the super-altar used in

[1] The Privy Council was of course not bound, as the Court below were, by *Faulkner* v. *Litchfield*, and the appeal was practically against Sir Herbert Jenner Fust's decision in that case.

Roman Catholic churches. The Judicial Committee[1] held that nothing superstitious or improper had been shewn in the addition of the ledge; and even if there were anything, they expressed themselves not satisfied that the monition extended to it: neither disobedience nor offence was established with regard to it.[2]

The effect of these cases is that wood is the only material of which a communion table can lawfully be constructed. Dr. Lushington's judgment in *Westerton* v. *Liddell* practically decides also that no wooden altar will be pronounced illegal, but it will be remembered that, as to this, his decision was not appealed against.[3]

B.—Altar-Cloths.

The legality of coloured altar-cloths was one of the points established in *Westerton* v. *Liddell*.[4]

In that case it was complained that the communion table was covered and decorated by five differently coloured coverings, each being embroidered and adorned, which were varied at different periods of the year. There was no dispute as to the facts.

The law applicable to this matter, and to that next to be considered, is contained in the rubric at the beginning of the Communion Service ("the table at the communion time, having a fair white linen cloth upon it, shall stand in the body of the church," &c.), and

[1] Lord Justice Knight Bruce delivered the judgment. The Committee which sat was composed of Lord Kingsdown, Lord Justice Knight Bruce, Sir Edward Ryan, and Lord Justice Turner.

[2] *Liddell* v. *Beal*, 14 Moore's Privy Council Cases, p. 1.

[3] See at p. 151 of Moore's Report.

[4] See above, p. 8.

the 82nd of the Canons of 1604, which appoints that the communion tables shall be "covered, in time of divine service, with a carpet [1] of silk or other decent stuff, thought meet by the ordinary of the place, if any question be made of it, and with a fair linen cloth at the time of the ministration, as beseemeth that table." [2] Dr. Lushington observed [3] as to the Canon that it "is in entire conformity with the rubric so far as relates to the time of the ministration of the sacrament, and it is not opposed to the Statute [4] in the other directions given by it. It is, therefore, valid, and must be considered to be the law of the Church on the subject." Dr. Lushington pronounced the cloths illegal on the grounds (1) that no authority could be cited for them; (2) that the silence of the Canon excluded them by implication; (3) that they were introduced in imitation of the Church of Rome. He also said that if it were a matter of discretion, he would forbid them.[5]

A monition accordingly issued to take away all cloths used in the church for covering the communion table during divine service, and to substitute one only covering for such purpose, of silk or other decent stuff.

[1] "Carpet" is here used in its old sense of table-cloth. Cf. Middleton, 'The Phœnix,' Act IV., Scene 1: "*Boy.* O master, master, your abominable next neighbour came into the house . . . and took away your best carpet. *Qui.* Has he it? . . . O, I'll give him the table too." Etherege, 'She Would if She Could,' Act V., Scene 1: "Madam, let him creep under the table, the carpet is long enough to hide him." Compare the French *tapis*.

[2] See above, p. 5.

[3] Moore's Report, at p. 74.

[4] I.e. the Act of Uniformity.

[5] The learned Judge announced his general policy as follows (p. 76): "I declare that I consider it to be my duty to prevent the introduction of all novelties, especially of such as have no other recommendation than the approbation and custom of the Church of Rome."

On appeal, Sir John Dodson held that this question had been left by the Canon in the discretion of the Ordinary, and that, the decision of the Judge sitting in the Consistorial Court of the Ordinary having been obtained, there was no reason for departing from that decision.

The Privy Council reversed the decisions of the Courts below on this point. Their Lordships declared themselves unable to hold that an order that a table shall always be covered with a cloth implies that it shall always be covered with the same cloth, or with a cloth of the same colour or texture. "The object of this Canon seems to be to secure a cloth of a sufficiently handsome description, not to guard against too much splendour. In practice . . . black cloths are in many churches used during Lent, and on the death of the Sovereign, and some other occasions, and there seems nothing objectionable in the practice. Whether the cloths so used are suitable, or not, is a matter to be left to the discretion of the Ordinary. In this case their Lordships do not see any sufficient reason for interference, and they must, therefore, advise the reversal of the sentence as to the cloths used for the covering of the Lord's table during the time of divine service."

The leaving of the holy table wholly bare and uncovered during divine service, whether there be an administration of the holy communion or not, is a breach of the 82nd Canon, and illegal: *Elphinstone* v. *Purchas.*[1]

[1] Law Rep. 3 Adm. & Ecc. at p. 107.

C.—Embroidered Linen Cloths.

This was another of the matters dealt with in *Westerton* v. *Liddell*.[1] It was complained that the communion table at the time of the administration of the holy communion was covered with a covering of worked and embroidered white linen, ornamented and enriched, and bordered at the ends with elaborately worked lace. The defendant's answer admitted the truth of this allegation as to one of the churches in question.[2]

The question depends on the rubric and canon quoted in the last section.

Dr. Lushington expressed his opinion that a cloth so embroidered as alleged by the promoter was not legal within the rubric and canon, and issued a monition ordering the removal of "any cover used at the time of the sacrament, worked or embroidered with lace or otherwise ornamented," and the substitution of "a fair white linen cloth, without lace or embroidery or other ornament, to cover the communion table at the time of the ministration of the sacrament."

Sir John Dodson observed that the Canon contained no suggestion of any addition to the "fair white linen cloth" ordered by it, and that if the law left the matter unsettled, it was to be decided, as it had in this case been decided, by the Ordinary.

The judgment of the Privy Council on this point is as follows: "The rubric and the Canon prescribe the

[1] See above, p. 8.

[2] There is some confusion in the report of Dr. Lushington's judgment between the two churches, but the fact of this admission appears from the judgment of the Privy Council: Moore's Report, at p. 153.

use of a fair white linen cloth, and both the learned Judges in the Courts below have been of opinion that embroidery and lace are not consistent with the meaning of that expression, having regard to the nature of the table upon which the cloth is to be used. Although their Lordships are not disposed in any case to restrict within narrower limits than the law has imposed, the discretion which, within those limits, is justly allowed to congregations by the rules both of the Ecclesiastical and the Common Law Courts, the directions of the rubric must be complied with; and upon the whole their Lordships do not dissent from the construction of the rubric adopted by the present decree upon this point; and they must therefore advise Her Majesty to affirm it."

Any embroidery or ornament upon the "fair white linen cloth" is therefore, according to this decision, illegal.

D.—Baldacchino.

The legality of a baldacchino or canopy over the holy table was discussed in the case of *White* v. *Bowron*.[1] The structure proposed in that case to be set up is thus described at page 212 of the judgment: "The proposed baldacchino is a handsome marble structure, or canopy, with a pointed roof and three gables pointing different ways, supported by four columns standing apart from the east wall of the church, and would cover the holy table, extending about two feet beyond the west side of the holy table, leaving sufficient space for the celebrant priests to

[1] Law Rep. 4 Adm. & Ecc. 207.

stand within the canopy on the north and south sides of the table."

The case came before the Consistory Court of London on an application for a faculty authorizing the erection of the baldacchino above described in the Church of St. Barnabas, Pimlico. The case was argued on the 23rd and 24th of October, 1873. On the 15th of December, Dr. Tristram, the Chancellor of the Diocese, gave judgment refusing the faculty.

The following is an outline of the judgment:—

In England, the introduction into general use of altar canopies is referred to a constitution of Archbishop Peckham, A.D. 1279.[1] Before the Reformation the canopies appear to have been composed principally of some stuff or silken material, both in Western Europe and in England. The altar canopy in St. Peter's at Rome is said to have been the first baldacchino of durable material in Western Europe, and the first wooden or stone tabernacle resting on the altar in England seems to have been put up in Mary's reign. The baldacchino is a mark of honour, and as such is ordered by the Rituale Romanum to be carried over the host to the sick. Is a baldacchino an ornament within the meaning of the "Ornaments Rubric"[2] in the Prayer Book? The term "ornaments" (as was said by the

[1] "Dignissimum eucharistiae sacramentum praecipimus de cetero taliter custodiri, ut in qualibet ecclesia parochiali fiat tabernaculum cum clausura decens et honestum, ... in quo ipsum Dominicum corpus non in bursa vel loculo propter comminutionis periculum nullatenus collocetur, sed in pyxide pulcherrima lino candidissimo interius adornata." (Lynd. Prov. 3. 25.)

[2] "And here is to be noted that such ornaments of the church and of the ministers thereof, at all times of their ministration, shall be retained, and be in use, as were in this Church of England, by authority of Parliament, in the second year of the reign of King Edward the Sixth."

Privy Council in *Liddell* v. *Westerton*[1]) is not confined to articles of decoration or embellishment, but is used in the larger sense of the word "ornamentum," *pro quocumque apparatu seu instrumento*, and all the several articles used in the performance of the services and rites of the Church are ornaments. The Privy Council in that case further decided that the word "ornaments" in the rubric is confined to those articles the use of which in the services and ministrations of the Church is prescribed by the First Book of Edward VI., and that ornaments of the Church not prescribed by that book, and not consistent with and subsidiary to the performance of the services of our Church, are prohibited by law. *Martin* v. *Mackonochie*[2] is to the same effect. The altar canopies in use before the Reformation seem to me clearly to be ornaments in the sense in which that word is used in the rubric. Is a baldacchino of durable materials an ornament too? It is not an architectural adornment, for it is merely an erection in connexion with the holy table, and has no meaning apart from it. Being an erection in connexion with the table, it is either so attached to it as to form part of it, or a structure separate from it, but in connexion with it; if the former, the table with the baldacchino attached to it is not the table required by the 82nd Canon;[3] if the latter, it is clearly an ornament, for there is no sufficient distinction between the old altar canopies and the later baldacchinos to take the latter out of the category of church ornaments. The material makes no difference; so a stone altar would

[1] Moore's Report, p. 156. See below, p. 89.
[2] Law Rep. 2 Privy Council Cases, 365.
[3] See above, p. 5.

be equally a church ornament as a wooden table.[1] Such a baldacchino, therefore, as is here proposed to be put up is an ornament; and it is nowhere referred to in the First Book of Edward VI. Moreover, it cannot be justified as being consistent with and subsidiary to

[1] Dr. Tristram appears to have overlooked the fact that this dictum is in direct conflict with the decision of Sir Herbert Jenner Fust in *Faulkner* v. *Litchfield* (see above, p. 8), that a stone altar is not an ornament. It will be observed that this is not a mere expression of opinion, but is the foundation of the judgments both in *Faulkner* v. *Litchfield* and *Westerton* v. *Liddell*. For if a stone altar is an ornament, it was one of the ornaments that "were in this Church of England, by authority of Parliament, in the second year of the reign of King Edward the Sixth." This is plain, according to the principles laid down in *Liddell* v. *Westerton*, and affirmed in *Martin* v. *Mackonochie*, because the test whether or not an ornament is within the rubric is there declared to be the fact that it is or is not prescribed by the First Book of Edward VI. Now the whole of the reasoning of *Faulkner* v. *Litchfield* and *Westerton* v. *Liddell* rests on the position that "altar" in the First Book means a stone altar, such as had been in use before the Reformation, and therefore, "altar" being mentioned in that Book, a stone altar, if it be an ornament, is not only allowed but required by the "Ornaments Rubric." The passage of Sir Herbert Jenner Fust's judgment referred to will be found in 1 Robertson's Reports, at p. 254: "It was contended that as stone altars were in use 'in the second year of Edward VI.,' they, being ornaments, are now to be retained. To be sure, were that argument valid, not only is this stone altar or table proper, but no other species of table ought to be erected." He then quotes Durandus to show that an altar is not an ornament, and concludes, "The altar is nowhere, that I can find, enumerated amongst the ornaments of the church or choir." If this be right, it is difficult to see how the decision in *White* v. *Bowron* can be supported; for if a baldacchino be not an ornament, what can it be but an architectural decoration? And such a decoration, unless superstitious, is unobjectionable in point of law; discretion is of course another matter. It should be further observed that however a stone altar ought to be described according to *Faulkner* v. *Litchfield* and *Westerton* v. *Liddell*, it was determined in those cases to be illegal, not because it was not mentioned, or because it was in itself superstitious, but because it was considered to be prohibited by the actual words of the rubrics and Canons in force. No such considerations can apply to a baldacchino unless attached to the holy table.

the service, for the direction in the First Book that the priest is to consecrate "without any elevation or shewing the sacrament to the people," is inconsistent with retention of an ornament introduced and used in order to exhibit on high the reserved sacrament. There is historical evidence that under both the Injunctions of 1547 and those of 1559 canopies were removed as monuments of superstition.[1] I conclude that the proposed baldacchino is a church ornament, within the meaning of the rubrics; and, as it is not prescribed by them, nor can be regarded as in any way necessary or subsidiary to the performance of the services of the church, I decline to order the faculty to issue.

The learned Judge having come to the conclusion that the structure proposed was illegal, the question whether in his discretion he should authorize it did not arise.

E.—Reredos.

The question what form of reredos is lawful has come up for decision in the cases of *Boyd* v. *Phillpotts*,[2] *Hughes* v. *Edwards*,[3] and *Re St. Lawrence, Pittington*.[4]

[1] The 28th of the Injunctions of 1547 orders the clergy to "take away, utterly extinct, and destroy all shrines, covering of shrines, all tables, candlesticks, trindles, or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition, so that there remain no memory of the same in walls, glass windows, or elsewhere within their churches or houses": 1 Card. Doc. Ann. 17. The 23rd of the Injunctions of 1559 is, with a few verbal differences, the same: 1 Card. Doc. Ann. 221.

[2] Law Rep. 4 Adm. and Ecc. 297; 6 Privy Council Cases, 435.

[3] Law Rep. 2 Prob. Div. 361.

[4] Law Rep. 5 Prob. Div. 131.

In each of these cases very much necessarily turned upon the exact nature of the decoration proposed or complained of, but some general principles are to be derived from the decisions.

In *Boyd* v. *Phillpotts* the reredos attacked was in the Cathedral of Exeter, and it is thus described by Mr. Justice Keating:[1] "The structure which occasions the present discussion is of alabaster and marble at the east end of the chancel of the cathedral, and occupies about the space sufficient to serve as a back to the communion table, the spaces at either side being an open grating, admitting a view of the Lady Chapel behind. It consists of three compartments, the centre one being very much elevated above the others, and rising to a point from which springs the pedestal of a very beautiful and highly ornamented cross, with two angels on pedestals, one on either side. Immediately below the arch of the compartment, and in a separate and richly ornamented frame, is the figure of the Saviour ascending, looking upwards with his hands extended sufficiently to exhibit the stigmata. It is in alto-relievo, with a kneeling angel on each side in adoration. Below the frame is a group of smaller figures representing the Apostles in different attitudes of wonder and adoration. The lower compartment on the right contains the figures of the Apostles on the day of Pentecost, with the tongues 'like as of fire' on their heads, whilst the Holy Ghost, represented by the figure of a dove, hovers over them. That on the left represents the figure of our Lord as transfigured, with Moses and Elias on either hand, and the three Apostles in front. The marble post or column at each end of the reredos supports the figure of an angel on a pedestal. All

[1] See Law Rep. 4 Adm. and Ecc. at p. 313.

the figures are small; the figure of the Saviour in the centre, which is considerably the largest, not being, I should judge, more than three feet high. The whole is elaborately and beautifully carved, and richly, indeed profusely, gemmed and ornamented with coloured marbles."

A petition was presented to the Bishop of Exeter praying that he would inquire into the erection of the reredos; and thereupon the Bishop cited the Dean and Chapter to appear before him to answer certain articles of inquiry touching the matters complained of.

The visitation was held by the Bishop, assisted by Mr. Justice Keating as assessor, on the 7th of January, 1874, and, a preliminary question as to jurisdiction having been disposed of, on the 15th of April the Bishop, acting on the written opinion of the assessor, decreed the removal of the reredos and images, the substitution of either a stone screen without images or open ironwork, and the setting up of the Ten Commandments at the east end of the choir. The Bishop at the same time expressed his willingness to authorize the erection of any other legal form of decoration on application for a faculty for that purpose.[1]

As to the legality of the reredos in question the reasoning of Mr. Justice Keating was as follows:—The question here is whether the placing and continuing on the reredos the images complained of is illegal. The expulsion of images from the churches was one of the

[1] One of the points ultimately decided by *Boyd* v. *Phillpotts* was that no faculty is needed for alterations in a cathedral church: see per Sir Robert Phillimore, Law Rep. 4 Adm. & Ecc. pp. 341 *sqq.*; judgment of the Privy Council, Law Rep. 6 Privy Council Cases, at p. 456; per Lord Coleridge, C.J., Law Rep. 23 Q. B. Div. at p. 440.

great objects of the Reformers. The Injunctions of Edward VI. in 1547 ordered the clergy to take down and destroy such images as had been abused with pilgrimages or offerings or as should be thereafter censed unto;[1] and in the same year, disputes having arisen as to what images had been abused, the Privy Council directed the Bishops to order that all the images remaining in any church or chapel within their dioceses should be removed and taken away.[2] In 1549 the Statute 3 & 4 Edw. 6, c. 10, was passed,[3] declaring the illegality of retaining any images in churches. It relates to the destruction of images already ordered to be removed (see judgment of the Privy Council in *Liddell* v. *Westerton*, Moore's Rep. at p. 171), i.e. of all images, for all images were to be removed under the letter of the Privy Council of 1547. The wide interpretation given to the Act at the time is shewn by Bishop

[1] 1 Card. Doc. Ann. 7. See below, p. 41.

[2] *Ibid.* p. 47.

[3] This Act is entitled "An Act for the abolishing and putting away of divers books and images"; but it appears probable that it was originally intended to deal only with books, and that the provisions against images were inserted by an afterthought. The preamble and the first section make no mention of images, but, after setting forth the superiority of the Prayer Book then lately issued to the old service books, forbid the use or retention of the latter. The second section enacts that if any one have in his custody any such books "or any images of stone, timber, alabaster, or earth, graven, carved, or painted, which heretofore have been taken out of any church or chapel, or yet stand in any church or chapel, and do not before the last day of June next ensuing deface or destroy, or cause to be defaced or destroyed, the same images and every of them," and do not give up such books to be destroyed, he shall for every such book willingly retained in his custody forfeit a certain sum. The Act is so hastily drawn that no penalty is appointed for the retention of images. Section 6 excepts sepulchral monuments from the operation of the Act. The other sections have no special reference to images.

Ridley's Visitation Articles of 1550, for he inquires (among other things) "whether there be any images in your churches."[1] This Statute was repealed 1 Mar. sess. 2, c. 2, but on the repeal of that Act by 1 Jac. 1, c. 25, s. 48, again revived, and is still in force. The destruction of images was actively carried on in Elizabeth's reign (notwithstanding that the Act of Edward VI. was then not in force), under commissions issued by the Queen by virtue of her supremacy. The revival of 3 & 4 Edw. 6, c. 10, by the Act of James I., shews that the Legislature adopted what had been done under Elizabeth. Laud, though he favoured images, never asserted that they were lawful. The whole of the reasoning in *Liddell* v. *Westerton* shews that the Privy Council then sanctioned the erection of a cross on the ground that it was not an image, and that if they had thought that it was an image they would have pronounced it to be illegal. Images then in churches are unlawful, and the figures on this reredos are in my opinion images; the fact that they are in high relief and not detached, and that they are grouped together so as to represent a scene, makes no difference. They admittedly come within the images denounced in the Homily on the Peril of Idolatry and Superfluous Decking of Churches, which is sanctioned by the 35th Article.

The learned Judge accordingly advised the Bishop that the images on the reredos were illegal.

From the Bishop's judgment given in accordance with this advice an appeal was brought to the Court of Arches, and was heard by Sir Robert Phillimore on the merits on the 23rd, 24th, and 25th of July, 1874. Judgment was delivered on the 6th of August, reversing the

[1] 1 Card. Doc. Ann. 92.

decision of the Bishop, and pronouncing for the lawfulness of the reredos and images.

The following is an outline of the judgment so far as it concerned this point:—

No doubt the extirpation of the abuses connected with images was specially aimed at by the English reformers, but at first the abuse merely, and not the use, of images was attacked. The letters of the Privy Council in 1547 had no legal authority. The Visitation Articles of Cranmer in the same year, in which he inquires whether "all images, all shrines, coverings of shrines, all tables, candlesticks, trindles, or rolls of wax, pictures, paintings, and all other monuments of feigned miracles, pilgrimages, idolatry, and superstition,"[1] have been removed and destroyed, refer only to such images as come within the category of monuments of feigned miracles, &c. The object of 3 & 4 Edw. 6, c. 10, was to prevent the restoration of the identical images which had been abused, and had been, or ought to have been, removed. I doubt very much whether it prohibited the erection of all images for the future, and there are no express words to that effect. If the construction contended for is correct, it is an offence to have in a private house a Latin service-book, or to erect in any church any painted picture,[2] or carved figure. The authority of the Homilies has been exaggerated; there is no warrant for ascribing statutory authority to all the propositions contained in them. The 22nd Article [3] forbids

[1] 1 Card. Doc. Ann. 50.

[2] See the Report, at p. 363. It may be doubted however whether any painted picture, not being an "image of stone, timber, alabaster, or earth," would be within the Act.

[3] "The Romish doctrine concerning purgatory, pardons, worshipping, and adoration, as well of images as of reliques, and also

only the worshipping of images, not their use. The reredos now in question differs nothing in principle from a painting on glass or on a wall. The figures on it are not liable to the abuse, the existence of which caused the orders for the removal of images; they are not liable to have candles burnt before them, to be decked with jewels and precious raiment, or to be kissed or worshipped, or treated as workers of false and feigned miracles; they present no reasonable "peril of idolatry." The case of *Cocke* v. *Tallents*, in the Court of Arches in 1684, supports this view; there, in spite of opposition on the ground of danger of superstition and idolatry, a faculty was granted for the erection or painting of figures of the Apostles[1] in a parish church. The reredos then is lawful, and in the exercise of my discretion I consider it proper.

From this judgment there was an appeal to the Privy Council. It was argued on the 19th and three following days of January, 1875, before Lord Hatherley, Lord Penzance, Lord Selborne, Lord Chief Baron Kelly, Sir Montague Smith, and Sir Robert Collier. The judgment was delivered by Lord Hatherley on the 25th of February in the same year.[2] Their Lordships upon the question of the legality of the reredos upheld the decision of the Court of Arches. The substance of the judgment is as follows:—

The letter of the Council in 1547 was merely a tem-

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invocation of saints, is a fond thing vainly invented, and grounded upon no warranty of Scripture, but rather repugnant to the word of God."

[1] "Pro erectione sive pictione effigierum apostolorum."

[2] Law Rep. 6 Privy Council Cases, p. 449.

porary administrative act, and did not contain or profess to contain the enunciation of any general law of a permanent character with respect to images. It is not necessary to consider the authority of this document, or of the Injunctions of 1547, seeing that the Statute 3 & 4 Edw. 6, c. 10, is still in force. That Statute recognized by implication the validity of the Injunctions and letter, but its efficacy was spent upon the definite purpose to which it was directed, and it neither made, nor was intended to make, provision in respect of the subsequent use or abuse of any other images than those which had already been ordered to be removed. The Injunctions of Elizabeth in 1559[1] refer only to such pictures, images, &c., as were tainted with falsehood or superstition.[2] The 22nd Article condemns only the abuse of images. The Homilies are only recommended by the Canons and Articles as containing doctrines generally to be approved, but this recommendation does not give special force to the opinion of the author of the Homily on the Peril of Idolatry that all images are dangerous as tending to idolatry. Such an opinion is in no sense doctrine, and the reasons on which it was based have in great measure ceased to exist. The Visitation Articles of Archbishop Parker in 1567 and 1569[3] observe the dis-

[1] See *ante* p. 20, note.

[2] See also Elizabeth's Proclamation in 1560 (1 Card. Doc. Ann. 289), intended to repair so far as possible the mischief done to churches by unauthorized destruction, especially of monumental effigies, "to the slander of such as either gave or had charge in times past only to deface monuments of idolatry and false feigned images," and to prevent the occurrence of like mischiefs in the future.

[3] The Articles of 1567 are printed in 1 Card. Doc. Ann. p. 337. The Sixth Article (p. 340) directs inquiry "of the doctrine and judgment of all and singular head and members of your Church

tinction between representations which had been abused and those which had not. It is doubtful whether Archbishop Grindal's Articles of 1576 were ever exhibited.[1] From that time (notwithstanding the revival of 3 & 4 Edw. 6, c. 10, by 1 Jac. 1, c. 25) there appears neither to have been further legislation nor inquiry with reference to pictorial or sculptured representations of sacred subjects in churches. Is the present sculpture in danger of being abused? It has plainly been set up for the purpose of decoration only. It is not suggested that superstitious reverence has been, or is likely to be, paid to any figures forming part of it. Such a decorative work would be lawful in any other part of the church, and there is nothing illegal in the particular position which it occupies. We attach no importance to *Cocke* v. *Tallents*, as it appears from the record, with which we have now been furnished, that that case proceeded on consent. We wish it to be understood that nothing decided in this case affects the question of superstitious regard being paid, contrary to the 22nd Article, to any representation or image. The law will be strong enough to correct and control any such abuse,

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. . . whether any of them . . . teach . . . that any man is to be borne with which do extol any superstitious religion; as reliques, pilgrimages, lightings of candles, kissing, kneeling, or ducking to images."

The Sixth of the Articles of 1569 (1 Card. Doc. Ann. p. 356) inquires "whether images and all other monuments of idolatry and superstition be destroyed and abolished in your several parishes."

[1] The Sixth of these (1 Card. Doc. Ann. p. 399) inquires "whether all vestments, albs, tunicles, stoles, phanons, pixes, paxes, handbells, sacring-bells, censers, chrismatories, crosses, candlesticks, holy-water-stocks, images, and such other relics and monuments of superstition and idolatry be utterly defaced, broken, and destroyed."

but the sculpture in question is not liable to be impugned in that respect.

In *Hughes* v. *Edwards* [1] there was a petition for a faculty for the erection of a central compartment in a reredos in St. Mary's Church, Denbigh. The compartment had been put up with the rest of the reredos, but had been removed before the consecration of the church at the Bishop's desire. The compartment consisted of a sculptured panel representing the Crucifixion scene, having the figure of our Saviour on the Cross, and the figures of St. John and the three Marys on either side. The length of the compartment was two feet ten inches. The figure of our Saviour was two feet eight inches high. The whole was of Caen stone, all the figures being in high relief. The other two compartments of the reredos represented the gathering of manna and the bearing of the cluster of grapes of Eshcol respectively. The faculty was opposed on the ground that the proposed erection was likely to receive superstitious regard and reverence, and would be in danger of being abused. The cause was heard on the 2nd of June, 1877, before Lord Penzance as Dean of the Arches. His Lordship delivered judgment on the 18th of June to the following effect:—

In this particular case the proposed object must be rejected on the ground of illegality, or not at all; there is no material on which I can base an exercise of discretion. *Boyd* v. *Phillpotts* [2] establishes that a group of sculptured images is lawful if it be set up for decoration only, if it be in no danger of abuse, and if no superstitious reverence has been, or is likely to be, paid

[1] Law Rep. 2 Prob. Div. 361.
[2] See above, p. 21.

to any of the images. Here the sculpture is in its general character an architectural decoration, and it is part of a larger architectural decoration. Is it in danger of abuse? It appears from Roman Catholic liturgical books that a representation of Christ crucified, such as that in question, would satisfy the requirement made by the Roman Church that a crucifix should be on the altar during the Mass. But in order to prove that this sculpture is illegal, it must be established that abuse is not only possible, but also probable. According to the principles contended for by the opponents of this faculty, all pictures or painted windows above the holy table containing a figure of the crucified Saviour, whether isolated or forming part of a group, would be illegal. How can a representation of the Crucifixion be illegal, and a representation of the Ascension, such as was allowed in *Boyd* v. *Phillpotts*, be legal? The illegality of this decoration is not established, and a faculty for its erection will be granted.

The case of *St. Lawrence, Pittington*,[1] was a petition for a faculty for painting an arcaded reredos which already existed in the church. The reredos consisted of three compartments. The design of the proposed painting was as follows:—In the central compartment a figure of Christ as King, with crown, orb, and sceptre, the head encircled with a nimbus, the feet resting on a rainbow, and the whole figure surrounded with rays of glory; the design being intended to represent our Lord's eternal reign; in the north compartment figures of the Blessed Virgin and St. Lawrence, and in the south compartment figures of St. Stephen and St. John: the faces of the figures in the side compartments were

[1] Law Rep. 5 Prob. Div. 131.

turned towards the figure of Christ in the middle compartment. The faculty was not opposed.

The cause was heard by Mr. Cowie, the Chancellor of the diocese of Durham, on the 28th of February, 1880, and on the 18th of March judgment was delivered.

The learned Chancellor deduced from *Boyd* v. *Phillpotts*,[1] *Clifton* v. *Ridsdale*,[2] and *Hughes* v. *Edwards*,[3] the principle that the test of illegality in such a case is the probability or danger of any of the images in question being abused by receiving adoration or superstitious reverence; and after adverting to the difference insisted upon in those cases between representation of historical scenes and isolated figures, he expressed himself as follows: "I cannot escape the apprehension—to my mind a just and reasonable apprehension—that this decoration introduced immediately above the holy table of a parish church might lead to adoration or superstitious reverence . . . being paid to its principal figure. I have therefore no choice (according to *Ridsdale* v. *Clifton*) but to hold that there would exist that danger of its being abused, which would be fatal to its legality if it were set up in the church; and under these circumstances it is my duty to exercise my discretion so as to guard against its introduction. . . . Taking the view which I do of the principal figure, it is unnecessary that I should add anything with regard to the others." And he accordingly declined to grant the faculty.

It will be noticed that it is not perfectly clear whether the Court in this case definitely decided that

[1] See above, p. 21.
[2] See below, p. 73.
[3] See above, p. 29.

the proposed painting was illegal, or considered it of so doubtful legality that in its discretion it declined to authorize it. The use of the word "discretion" in the judgment certainly seems to point to the latter conclusion, for, unless what is proposed is lawful, there is no room for discretion.

It is made plain by these cases that (1) there is no distinction for these purposes between a decoration set up by way of reredos and decoration in other parts of a church; (2) there is a strong distinction between representations of historical scenes and single figures, even of historical persons; (3) there is no special law now in force rendering any images illegal; but where there is in the opinion of the Court danger of their abuse by idolatry or idolatrous reverence, they will not be sanctioned.[1]

It should be added that in the case of *Reg.* v. *Bishop of London*[2] the cases above noticed, and especially *Phillpotts* v. *Boyd*, were a good deal discussed. The question there in controversy was whether the Bishop of London had complied with the provisions of s. 9 of the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), in dealing with a representation complaining of the reredos erected in St. Paul's Cathedral. The Bishop had given as one of his reasons for not proceeding further in the matter that the main question in dispute had been already decided in *Phillpotts* v. *Boyd*, and that there was no substantial distinction between the two cases. Most of the Judges before whom the case came abstained

[1] See further, at p. 72, the section as to crucifixes. And see also the St. Ethelburga Faculty Case, Tristram Cons. Judg., p. 69.

[2] Law Rep. 23 Q. B. Div. 414; 24 Q. B. Div. 213; 1891 App. Cas. 666.

from expressing any opinion as to the correctness of the Bishop's decision, he being, in the view which ultimately prevailed, invested by the Statute with full discretionary power over the matter. But it may be noticed that while Lord Coleridge[1] declared his "respectful amazement" that the Bishop could see the smallest similarity between the reredos at Exeter and that in St. Paul's, Lord Justice Lopes[2] said that in his judgment the Bishop had correctly understood *Phillpotts* v. *Boyd*, and had rightly applied the principles there laid down to the case before him.

F.—Crosses and Crucifixes on the Communion Table.

The question whether a cross standing on the altar is lawful, was one of those discussed and decided in *Westerton* v. *Liddell*.[3] In that case the altar of St. Barnabas' consisted of a marble slab, with a super-altar; and the cross in question was attached to the super-altar, and stood between two large candlesticks which were moveable. At St. Paul's the table was of wood, and at the side of it next the wall was a narrow ledge raised above the rest of the table; upon this ledge (termed the super-altar) stood two gilded candlesticks which were moveable, and between them a wooden cross let into and fixed in the super-altar so as to form part of what was thus described as the altar or communion table.

[1] Law Rep. 23 Q. B. Div. at p. 443.
[2] Law Rep. 24 Q. B. Div. at p. 245.
[3] See above, p. 8.

The judgments of Dr. Lushington in the Consistory Court and of Sir John Dodson in the Court of Arches, dealt with the lawfulness of crosses generally as church decorations, and made no distinction between crosses on the altar and crosses in other parts of the church.[1] The Privy Council however held that the legality of crosses on the altar depended on considerations wholly different from those applicable to crosses elsewhere; and it will therefore be more convenient to pass by for the present the opinion of Dr. Lushington and Sir John Dodson that all crosses in churches are illegal, leaving them for examination in a later section.

The Privy Council, after coming to the conclusion (upon grounds hereafter to be explained[2]) that though the use of crosses in the Church service was abolished by the legislation of Edward VI. and his successors, there was nothing illegal in their erection as architectural decorations, went on to declare their opinion that the altar-crosses in question were illegal. As to the stone altar of St. Barnabas' the decision of the Committee has been already stated;[3] the cross was involved in the fate of the structure generally.

As to the cross at St. Paul's the judgment was thus worded: "Their Lordships have already declared their opinion that the communion table intended by the Canon was a table in the ordinary sense of the word, flat and moveable, capable of being covered with a cloth, at which, or around which, the communicants might be placed in order to partake of the Lord's Supper, and the question is whether the existence of a

[1] There were complaints as to crosses other than those on the altars.
[2] See below, p. 70.
[3] See above, p. 10.

cross attached to the table is consistent either with the spirit or with the letter of those regulations. Their Lordships are clearly of opinion that it is not; and they must recommend that upon this point also the decree complained of should be affirmed."

As to St. Barnabas' it was afterwards complained [1] that the monition to remove the structure of stone used as a communion table, together with the cross on or near the same, had been disobeyed inasmuch as the metal cross which was standing on or attached to the super-altar was then placed on the sill of the great eastern window above the table then used as a communion table. It appeared that this sill was five feet ten inches above the table and wholly disconnected therewith.

The judgment of the Privy Council on this complaint was as follows: "The cross has been placed in another part of the church or chapel, not in any sense upon the table which has been substituted for the stone table, nor in any sense in communication, or contact, or connexion with it. It remains in the church as an ornament [2] of the church, and their Lordships think (if the word may respectfully be applied to such a subject) not an unusual or improper ornament; in no sense remaining there so as to disobey or conflict with the order contained in this monition."

In *Elphinstone* v. *Purchas*,[3] a case which will claim much attention in later sections of this book, one of the

[1] *Liddell* v. *Beal*, 14 Moore, Privy Council Cases, 1; see p. 11, above.

[2] "Ornament" is here obviously used not in its technical sense, but as equivalent to "decoration." See per Sir R. Phillimore, Law Rep. 1 Prob. Div. p. 129.

[3] Law Rep. 3 Adm. & Ecc. 66; see at p. 105.

charges was that the defendant had placed, or caused to be placed, on the holy table, or on a narrow ledge resting thereon or connected therewith, or fixed immediately above the same so as to appear to the congregation to be in contact or connexion with the holy table, a large metal crucifix with a figure of the Saviour thereon (the same being intended for a ceremonial or religious purpose, and not being a part of the architectural decorations of the church, but being placed on such ledge with the object and intention of being made to appear a part of the furniture of the holy table), and allowed the same so placed to remain there during the performance of divine service and during the celebration of the holy communion. It was further charged that the defendant had veiled the crucifix during Lent, and removed the veil on Easter Day; and that he had bowed to it. Sir Robert Phillimore, the Dean of the Arches, gave his decision on this charge as follows: "I think I am bound to conclude from the evidence before me, unimpeached as it is by any other testimony, and in the absence of any explanation,[1] that the crucifix has been introduced into or connected with the performance of the services prescribed by the Prayer Book, so as to constitute an additional rite or ceremony.[2] And

[1] The defendant did not appear.

[2] The reference is to the Acts of Uniformity. 2 & 3 Edw. 6, c. 1, subjects to penalties any minister who should "use, wilfully and obstinately standing in the same, any other rite, ceremony, order, form, or manner of Mass openly or privily, or matins, evensong, administration of the Sacraments, or other open prayer than is mentioned in the said book" (i.e. the First Book of Edward VI.). 5 & 6 Edw. 6, c. 1, applies 2 & 3 Edw. 6, c. 1, to the Second Book thereby authorized. 1 Eliz. c. 2, revives 5 & 6 Edw. 6, c. 1, which had been repealed in Mary's reign, and by s. 4 re-enacts with respect to the Book of 1552, as altered in one or two particulars, the section of the 2 & 3 Edw. 6, c. 1, set out above, only substituting "cele-

I must admonish Mr. Purchas to abstain from the practice complained of in these articles." It is obvious that this decision throws very little light on the question of the legality of a cross on or near the altar when not ceremonially used.

In *Liddell* v. *Westerton* it seems to have been considered that the ledge with the cross upon it prevented the table from being such a table as is enjoined by the Canons and rubrics, though it is clear from *Liddell* v. *Beal* that the mere presence of a ledge upon the table with candlesticks and vessels upon it, so long as it is moveable, has no such effect. It might have been thought therefore that a cross near to, but not touching, the table, and not interfering with its moveability or flatness, would not be open to objection. *Durst* v. *Masters*[1] however shews that even though the cross and that on which it stands are not in contact with the table, if they are so situated that at a little distance the appearance is of a continuous structure, the law is violated.

In the church which was in question in that case, there was a moveable communion table of wood; at the back of it there was a retable consisting of a ledge of wood about a foot wide, and a front of wood eight inches and a quarter in height, coming down to within

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brating of the Lord's Supper" for "Mass." 13 & 14 Car. 2, c. 4, s. 24, enacts that the several good laws and Statutes of this realm which have been formerly made and are now in force for the uniformity of prayer and administration of the Sacraments shall stand in full force and strength to all intents and purposes whatsoever for the establishing and confirming of the present Prayer Book. Any rite or ceremony other than those mentioned in the present Prayer Book is, therefore, held to be illegal.

[1] Law Rep. 1 Prob. Div. 123, 373.

about a quarter of an inch from the top of the communion table as it stood. The two ends of the table were co-terminous with the ends of the table as it stood, and came down below the top of it in the form of brackets. There were two other similar brackets near the centre of the retable, also coming down below the level of the top of the communion table. The retable was fixed to the east wall of the church with nails. The eastern side of the communion table as it stood was in close contact with the brackets of the retable. On the retable, and near its north and south ends, stood two candlesticks. A moveable wooden cross of three feet three inches in height was placed on the retable between the two candlesticks, with the intention that it should remain there permanently.

The case came before Sir Robert Phillimore in the Court of Arches on the 20th of October, 1875. He held that the cross in question being not on, but above, the table, the case was not distinguishable from *Liddell* v. *Beal*, and that the cross was a lawful architectural decoration.

This decision was on the 11th of July, 1876, after consideration, reversed by the Judicial Committee of the Privy Council, composed of Lord Cairns (Chancellor), Lord Hatherley, Lord Penzance, Sir Barnes Peacock, and Sir Montague Smith. The judgment (delivered by Lord Cairns) was to the following effect: We agree that this case falls within *Liddell* v. *Westerton* and *Liddell* v. *Beal*. The only differences between the cross in St. Paul's Church there condemned and that now in question are, that while there the ledge upon which was the cross stood on the table, here it is fixed to the wall, and does not quite touch the table, and that

while there the cross was let into the ledge, here it is placed upon it, with the intention that it should remain there permanently. We think these differences altogether too trifling to distinguish legality from illegality, particularly as the appearance of the two altars to the congregation is practically identical. No stress was laid in *Liddell* v. *Beal* on the fact that the cross was no longer fixed, but the sole reason for the decision there was that the cross was no longer either in fact or seeming attached to or connected with the holy table. In the present case that is not so, and placed as it is here, the cross is illegal.

G.—Flowers on the Holy Table.

In the case of Mr. Parks Smith in 1847 (an account of which will be found in Stephens' Laws Relating to the Clergy, vol. ii. pp. 1083–9) the Bishop of Exeter (Phillpotts) decided that it was unlawful to place vases containing flowers upon the holy table. The Bishop rested this decision upon the provision in the Act of Uniformity[1] which prohibits the use of any rites or ceremonies other than those prescribed, and upon the fact that it could not be shewn that such vases were in use in the second year of Edward VI. so as to bring them within the "Ornaments Rubric."[2] He also expressed his opinion that the rubric at the beginning of the communion service, and the 82nd Canon,[3] which deal with the covering of the table, virtually exclude

[1] See above, p. 36, note.
[2] See above, p. 17, note.
[3] See above, p. 5.

all other things sought to be placed upon it (except what is used, or may be used in the service itself), provided that they cannot be shewn to come within the "Ornaments Rubric."

The placing vases of flowers on the holy table, or on a ledge connected with or close to it, and retaining them there during divine service, was one of the things complained of in *Elphinstone* v. *Purchas.*[1] Sir Robert Phillimore gave judgment as follows: "With regard to this charge, there is no evidence that the flowers were used as an additional rite or ceremony, or as an ornament in the sense affixed to that word in the judgment of the Privy Council in *Liddell* v. *Westerton.* They appear to me an innocent and not unseemly decoration, and one not ministering or subsidiary to any usage or doctrine which the Church has rejected or abrogated, and to be in the same category with the branches of holly at Christmas, and the willow blossoms on Palm Sunday, with which our churches have very generally been adorned. I have considered the Bishop of Exeter's judgment on this point to which I was referred, of which I think it is enough to say that it was given nearly ten years before the decision in *Liddell* v. *Westerton* had settled the law, and drawn the distinction between ornaments (ornamenta) and decorations." He concluded this part of his judgment by alluding to the distinction drawn by the Privy Council in *Martin* v. *Mackonochie*[2] between "the presence in the church of things inert and unused, and the active use of the same things as a part of the administration of a sacrament or of a ceremony."

[1] Law Rep. 3 Adm. & Ecc. at p. 106.
[2] See below, p. 45.

H.—Candles and Candlesticks.

With regard to this matter, the following documents are those principally material:—

The third of the Injunctions of Edward VI. (1547)[1] addressed to ecclesiastical persons, orders that such images as they know in any of their cures, to be, or have been so abused (as thereinbefore mentioned), with pilgrimage or offerings of anything made thereunto, or as shall be hereafter censed unto, they (and none other private person) shall, for the avoiding of that most detestable offence of idolatry, forthwith take down, or cause to be taken down, and destroy the same; and shall suffer from henceforth no torches nor candles, tapers, or images of wax to be set afore any image or picture, but only two lights upon the high altar, before the sacrament, which for the signification that Christ is the very true light of the world, they shall suffer to remain still.

It should be remembered that when the above Injunction was issued the Prayer Book had not been introduced, and the service had not been altered.

The "Articles to be followed and observed according to the king's majesty's injunctions and proceedings" (1549)[2] direct (1) that all parsons, vicars, and curates omit in the reading of the Injunctions all such as make mention of the popish mass, of chantries, of candles upon the altar, or any such like thing. (2) Item, for an uniformity, that no minister do counterfeit the popish mass, as to kiss the Lord's table; washing his fingers at every time in the communion; blessing his eyes with the

[1] 1 Card. Doc. Ann. 7.
[2] 1 Card. Doc. Ann. 74.

paten, or sudary; or crossing his head with the paten; shifting of the book from one place to another; laying down and licking the chalice of the communion; holding up his fingers, hands, or thumbs, joined towards his temples; breathing upon the bread or chalice; shewing the sacrament openly before the distribution of the communion; ringing of sacrying bells; or setting any light upon the Lord's board at any time; and finally to use no other ceremonies than are appointed in the king's book of common prayer, or kneeling otherwise than is in the said book.

These Articles are substantially embodied in Bishop Ridley's Visitation Injunctions, 1550.[1]

The first modern case in which the lawfulness of candles or candlesticks upon the communion table was discussed was that of *Westerton* v. *Liddell*, already so often referred to. There a faculty was sought for the removal (among other things) of the gilded candlesticks, and the candles therein, standing on the altar; and it was alleged that the candles were kept burning when they were not needed for light: it was not however alleged that they were burned when no other light was lighted, but merely that they were unnecessary, the table being sufficiently lighted by the other lights in the chancel. The answer alleged not only that the lights on the table afforded a more convenient light, but also that the use and exhibition of such candlesticks and candles, whether necessary or unnecessary for the purpose of light, was conformable to the laws of the Church.

The judgment of Dr. Lushington in the Consistory Court upon this part of the case was in outline as

[1] 1 Card. Doc. Ann. 93.

follows: Candlesticks and candles may be considered either as affording necessary light or as ornaments. In the former aspect, though there might be culpable excess as to form or size, the Court would not be disposed to scrutinize them narrowly. But the present case raises the question of their lawfulness as ornaments. Before the Reformation the use of candles and tapers beyond doubt prevailed, and the two lights upon the altar were expressly sanctioned by the Injunctions of Edward VI. in 1547. These do not appear to have been issued in pursuance of the various Statutes giving to Henry VIII. and Edward VI. power to issue proclamations having the force of law, and consequently have no statutory authority. Candles were not expressly authorized by 2 & 3 Edw. 6, c. 1, nor by the First Prayer Book of Edward. The setting lights on the communion table was expressly forbidden by the Articles of 1549. This shews that they were regarded at the time as prohibited by 2 & 3 Edw. 6, c. 1, and the First Book, and such prohibition was a repeal of the Injunctions of 1547. Probably since that time, though large candlesticks and candles have stood on or near the holy table in many cathedrals and royal and collegiate chapels, they have never been lighted except for necessary light, and in many cases not at all. There has been no usage of placing candles on the table in parish churches. It is said that by virtue of 25 Hen. 8, c. 19, s. 7,[1] the Consti-

[1] "Provided also, that such canons, constitutions, ordinances, and synodals provincial, being already made, which be not contrariant or repugnant to the laws, statutes, and customs of this realm, nor to the damage or hurt of the king's prerogative royal, shall now still be used and executed as they were afore the making of this Act, till such time as they be viewed, searched, or otherwise ordered and determined" by the Commissioners to be appointed under the Act. This revision of the Canons, &c., was never carried out.

tution of Archbishop Reynolds in 1322,[1] which orders "tempore quo missarum solennia peraguntur accendantur duae candelæ, vel ad minus una,"[2] is still the law of the Church. I am of opinion, however, that the Act of Henry VIII. with all that it purports to confirm and carry into effect is modified and repealed *pro tanto* by the Prayer Book and the Acts of Uniformity and other legislation relating to the Church, and that all laws previously existing, opposed to the Church by present law established, are repealed. The whole of Archbishop Reynolds' Constitution refers to the Mass, and that being abolished, the directions as to it are also gone. The same considerations destroy the validity of the Injunctions of 1547 as to this matter, for they order lights to be retained on the high altar, and there is now no high altar, and before the sacrament, meaning the Mass, for which the holy communion is now substituted. I hold therefore the Constitution of Archbishop Reynolds and the Injunctions of Edward VI. to be utterly incompatible with the doctrines and ritual of the Church of England. Holding as I do that the use of lighted candles on the holy table when not needed for light is implicitly forbidden by 2 & 3 Edw. 6, c. 1, and the First Prayer Book, I can see nothing that has happened since which makes them lawful; and I think therefore that such use is unlawful: I cannot, however, say that it is contrary to law to have candlesticks and candles on or near the table ready for use, should occasion require: nor do I deem it to be my duty to enter on minute inquiries as to the size and construction of the candlesticks.

No monition or faculty having been decreed as to the

[1] See Law Rep. 1891 Prob. p. 75.
[2] Lynd. Prov. 3, 23.

candlesticks or candles, they were not made the subject of the appeal which was brought as to some other points in the case.

In *Martin* v. *Mackonochie*[1] one of the charges was that the defendant had used lighted candles on the communion table during the celebration of the holy communion at times when they were not needed for purposes of light. The fact was admitted, except that it was stated that the candles were not on the table, but on a narrow moveable ledge of wood resting upon it, and were kept lighted not during the celebration only, but during the whole communion service, including the sermon.

This important cause, with another (*Flamank* v. *Simpson*) which raised practically the same points, was argued before Sir Robert Phillimore in the Court of Arches on sixteen days in December 1867, and January and February 1868. A very elaborate judgment, extending over more than a hundred and twenty pages of the Law Reports, was pronounced on the 28th of March, 1868. Before proceeding to consider the various specific charges made against the defendant, the learned Judge laid down some general principles which in his opinion governed such questions, and it will be convenient in the first place to give a summary of this portion of his judgment, as follows: The promoter relies principally on the Acts of Uniformity,[2] and upon the contention that the matters complained of are rites and ceremonies other than and additional to those prescribed in the Prayer Book and the last of those Acts (13 & 14 Car. 2, c. 4). It is therefore necessary to inquire what is

[1] Law Rep. 2 Adm. & Ecc. 116; 2 Privy Council Cases, 365.
[2] See above, p. 36, note.

the meaning of these two terms "rite" and "ceremony," being as they are terms of ritual and ecclesiastical art. From an examination of the authorities I conclude that a rite consists in services expressed in words; a ceremony in gestures or acts preceding, accompanying, or following the utterance of those words. Now, though some rites and ceremonies are, from their divine origin, immutable, all those here brought in question belong to the class held to be mutable as being within the authority of each particular or national Church to ordain, change, and abolish (see the 34th & 20th of the Thirty-Nine Articles). None of the ceremonies complained of are expressly directed to be used in the Prayer Book or the Act of Uniformity. Four grounds have been put forward upon which I am asked to declare their illegality. 1. That they are by necessary implication prohibited, inasmuch as they are connected with Roman or Popish doctrines. As to this it must be observed that before the Reformation the independence of the English Church was constantly affirmed, and that no new Church was created at the Reformation. Accordingly, though the general body of the Canon Law never was, and is not now, accepted as binding in England, the provincial constitutions of the English metropolitans collected in Lyndewode's Provinciale, and the general usage of the English Church, embodying to some extent the general Canon Law, have always since the Reformation been considered as having in matters ecclesiastical the force of law.[1] The continuous identity of the Church of England is shewn not only by the unbroken testimony of her divines, but by the catholic character and form of her Liturgy. No sound

[1] Compare Hallam, Hist. chap. 4, vol. i. p. 205, ed. 1827.

argument therefore against the lawfulness of the matters here objected to can be derived from the mere fact of their identity with the ceremonies in use before the Reformation. 2. That they have been disused ever since the Reformation. First, this argument proves too much, because it is certain that the law derived from the rubrics and canons has never at any period since the Reformation been universally or duly obeyed, and not a few of such rubrics and canons have been habitually and universally violated. A revived obedience to a long neglected law excites indignation as a novelty. The Privy Council, in *Liddell* v. *Westerton*, refused to condemn on the ground of desuetude credence tables or crosses, though they were shewn to have been almost totally disused. Secondly, disuse is often to be explained by the circumstances attending it. The troubles of the sixteenth century, and the first part of the seventeenth; the poverty of the clergy during the latter part of the seventeenth century; the defection of the nonjurors, including many of the most pious and careful clergy; the inattention during much of the eighteenth century, not only to the ornament, but in many cases to the decency of public worship; and the revival of piety and vigour by persons under the influence of Wesley, who took little heed of ecclesiastical tradition or primitive usage—all these things are quite enough to account for the disuse of many things enjoined or allowed by the Church. 3 and 4. That the matters complained of are rites or ceremonies additional to those prescribed by the Act of Uniformity and consequently unlawful; and that they have been expressly forbidden. An express prohibition may not be evaded by a contrivance, which under a different name or appearance attains the same

end, and whatever is expressly ordered may not be evaded by an illusory or partial compliance; but whatever is subsidiary to what is ordered, and whatever, being in itself decent and proper according to primitive and catholic use, is not by any fair construction necessarily connected with Roman novelties rejected at the Reformation, is (speaking generally) lawful. With regard to things neither forbidden nor commanded expressly or by implication, the order contained in the preface, "Concerning the Service of the Church," prefixed to the Prayer Book,[1] is to be applied, and the discretion of the Ordinary resorted to, subject of course to the restriction therein mentioned, that his order "be not contrary to anything contained in this book." I am of opinion that an order of the Bishop given in pursuance of this direction could be enforced under the penalties of contumacy. It is quite clear that the Prayer Book is not exhaustive, and therefore it is impossible to say that whatever is not commanded is forbidden; it has always been competent to supply omissions by reference to previous usage and practice. Accordingly usages, and articles whether of use or decoration, not expressly provided for by the Prayer Book, have been considered to be lawful, notably in

[1] "And forasmuch as nothing can be so plainly set forth but doubts may arise in the use and practice of the same; to appease all such diversity (if any arise) and for the resolution of all doubts, concerning the manner how to understand, do, and execute the things contained in this book; the parties that so doubt, or diversely take anything, shall alway resort to the Bishop of the diocese, who by his discretion shall take order for the quieting and appeasing of the same; so that the same order be not contrary to anything contained in this book. And if the Bishop of the diocese be in doubt, then he may send for the resolution thereof to the Archbishop."

Liddell v. *Westerton.* It is no test of the legality of any article to consider whether the churchwardens could be compelled to provide it, because they can only be compelled to provide necessary articles, and not those which, though innocent and suitable, are merely decorative.

The learned Judge then proceeded to the consideration of the specific charges. With reference to the candles his judgment was to the following effect: There is neither express sanction nor express prohibition of lights on the holy table in the rubrics, or the Acts of Uniformity, or the Canons of 1603. The question then is whether they are indirectly forbidden or are lawful, either as indirectly ordered, or innocently subsidiary to divine worship. There is a further question, whether they have been ordered by competent authority still binding on the Church. Do the Injunctions of 1547 come within this description? Were they issued under statutable authority? If so, were they subsequently abrogated by like authority? It is, to say the least, extremely doubtful whether the Crown ever had power to issue of its own authority injunctions of this kind. Both the Act of Supremacy (26 Hen. 8, c. 1), however, and the Proclamation Act (31 Hen. 8, c. 8), give powers to the Crown which would embrace the issuing such injunctions. It has been argued (and the argument was adopted by Sir John Dodson in *Westerton* v. *Liddell*) that these Acts were repealed by 1 Edw. 6, c. 12, intituled An Act for the Repeal of certain Statutes concerning Treason and Felonies, which in the third section repeals all Acts, "touching, mentioning, or in any wise concerning religion or opinions." I am brought however by an attentive examination of this Statute, and a consideration of the very startling consequences of holding the

contrary, to the conclusion that it only repeals laws inflicting severe penalties on account of opinions entertained concerning doctrine or matters of religion; otherwise the whole of the Reformation legislation of Henry VIII. would be abolished. I regard the authority of the Injunctions as established by the judgments of the Court of Arches and the Privy Council in *Westerton* v. *Liddell*. It is said that the formalities provided for by the Proclamation Act were not observed in issuing them, but at this distance of time it must be presumed that everything was done in order. Moreover the Injunctions are expressly recognised by the rubric after the Communion Service in the First Book of Edward VI.[1] Their legal authority was never seriously questioned before the judgment of Dr. Lushington in *Westerton* v. *Liddell*, and is affected by no Statute. The Articles of 1549 are of exceedingly questionable authority; they are not signed, and their author is unknown. In any case they cannot affect the question whether lights were in use in the church by authority of Parliament in the second year of Edward VI.[2] Moreover, it is clear from two letters written in 1549, that candles were then thought to be legal, and were in habitual use.[3] In the

[1] "Upon Wednesdays and Fridays the English Litany shall be said or sung in all places after such form as is appointed by the king's majesty's injunctions, or as is or shall be otherwise appointed by his highness." See Inj. 23, 1 Card. Doc. Ann. p. 15. See as to the history of the Litany, 1 Steph. Bk. of Common Prayer, p. 539, note. It is a little difficult to see how a direction that the Litany be used in the form appointed by the Injunctions can be a recognition of the continuing validity of the Injunctions generally.

[2] See the "Ornaments Rubric," quoted p. 17, note, above.

[3] The first is from Martin Bucer and Paul Fagius to the contaminsters at Strasburgh, dated Lambeth, April 26th, 1549; it doubt, tains the following passage relating to the English Reforma- bishop." 'We hear that some concessions have been made both

reign of Elizabeth the two lights were used in her chapel, and though much complaint was made of this by the Bishops and others, it was never suggested that they were illegal. The lawfulness of placing these two lights on the holy table appears to me established by the Injunctions, unless they are by necessary implication abolished, as significant of a papal superstition rejected by the Church at the Reformation. But (1) the lights were originally significant, not of any papal superstition, but of the light of the Gospel; (2) they were suffered to remain as being for the honour of Christ himself, and not of saints. Their use can be traced to the first centuries of Christianity. It is said that the words in the Injunction "before the sacrament" refer to the reserved sacrament, and that reservation being now unlawful, the meaning and legality of the lights have disappeared; but all the authorities shew conclusively that the light before the reserved sacrament was a single light. It is to be noticed also that in Cranmer's Visitation Articles of 1547[1] the words "before the sacrament" are left out. The fact that candlesticks and candles on the holy table are lawful ornaments, established by Dr. Lushington's judgment in *Westerton* v. *Liddell*, bears witness to the use of lights. Reviewing

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to a respect for antiquity and to the infirmity of the present age; such, for instance, as the vestments commonly used in the sacrament of the Eucharist, and the use of candles." The second is from Hooper to Henry Bullinger, dated London, December 27th, 1549. The following sentence occurs in it: "They still retain their vestments and the candles before the altars." These letters (translated) are printed in the collection of Original Letters relative to the English Reformation published by the Parker Society in 1847, at pp. 534 and 71 respectively.

[1] 1 Card. Doc. Ann. 49, 51.

the whole of these considerations, I am of opinion that it is lawful to place two lighted candles on the holy table during the time of the holy communion, "for the signification that Christ is the very true light of the world."

From this judgment (so far as concerned lights) an appeal was brought to the Privy Council. It was argued on the 17th and three following days of November 1868, before Lord Cairns, the Archbishop of York (Thomson), Lord Chelmsford, Lord Westbury, Sir William Erle, and Sir J. W. Colvile. Judgment was delivered on the 23rd of December in the same year by Lord Cairns. Their Lordships reversed the decision of the Dean of the Arches on the point now under discussion. Their reasoning was in substance as follows: These lights are either ceremonies or ornaments; apparently (though it is not quite clear) Sir Robert Phillimore considered them to be both. We are disposed to think that the actual use of them by burning constitutes them a ceremony, and so distinguishes them from things inert and unused, which are more properly ornaments. If they are a ceremony, they are rendered illegal by the Acts of Uniformity, and by the Prayer Book,[1] and these Acts have repealed the Injunctions of 1547, so far as they purport to authorize any ceremony. In any case it may be doubted whether a direction to place candles on the high altar can be binding now that tables have been substituted for altars. The Constitution of Archbishop Reynolds, if it was in force at the passing of any of the Acts of Uniformity, was repealed by those Acts. If on the other hand the lights are ornaments, they are governed by the so-called Orna-

[1] See p. 36, note, above; and especially 1 Eliz. c. 2, ss. 4, 27.

ments Rubric. That rubric was considered in *Liddell* v. *Westerton*, and that case establishes the following propositions with regard to it: (1) The words "authority of Parliament" in the rubric refer to 2 & 3 Edw. 6, c. 1, and not to earlier Canons or Injunctions having Parliamentary authority. (2) The word "ornaments" in the rubric means those articles whose use in the services and ministrations of the Church is prescribed by the Prayer Book of 1549, and only those. (3) Though there may be articles not expressly mentioned in the rubric, the use of which would not be restrained, they must be articles consistent with, and subsidiary to, the services, for example an organ, credence table, cushions, hassocks, &c. Applying these propositions, we find that lighted candles are not prescribed by the authority of Parliament mentioned in the rubric, and they are not subsidiary to the service, for they do not aid or facilitate it, nor are they necessary to it. They do not, therefore, satisfy the conditions necessary for their legality. We are further of opinion that the very general disuse of these lights after the Reformation, contrasted with their normal and prescribed use previously, affords a very strong contemporaneous and continuous exposition of the law upon the subject.

The next case is *Sumner* v. *Wix*.[1] There lighted candles were on a retable placed above the altar, and were used during the celebration of the holy communion when not required for light; lighted candles were also used on candlesticks standing on each side of the holy table during the communion when not needed for light. The morning service closed with the benediction, and the candles were then lighted by a chorister; there was

[1] Law Rep. 3 Adm. & Ecc. 58.

then a procession by the minister and choir from the church to the vestry. The procession returned, and the communion service was performed. After it was ended, there was another like procession, and the lights were put out. Lighted candles were also held on each side of the priest when reading the Gospel, though not needed for light.

The cause was argued before Sir Robert Phillimore in the Court of Arches on the 10th of January, 1870. Judgment was delivered on the 3rd of February. The learned Judge pronounced all the usages complained of with regard to lights illegal; that last-mentioned on the ground that it was an addition to the rites or ceremonies prescribed by the law. As to the other lights the judgment was to the following effect: It is not necessary here to reconcile the weight apparently given to the Injunctions of 1547 in *Liddell* v. *Westerton* with the total rejection of them as to this matter in *Martin* v. *Mackonochie*. Here the lights were not on the altar, and can therefore derive no support from the Injunctions; moreover the lighting and burning them in the manner and under the circumstances proved appears to me to fall under the category of ceremonies: they are not "inert and unused." [1]

In *Elphinstone* v. *Purchas* [2] it was charged and proved that the defendant had used lighted candles on the communion table, or on a ledge immediately above it, and appearing and intended to appear part thereof, during the celebration, as a matter of ceremony, when not needed for light; and also had used lighted candles standing on and about and before the table during morn-

[1] See Law Rep. 2 Privy Council Cases, p. 387.
[2] Law Rep. 3 Adm. & Ecc. 66.

ing prayer, as matter of ceremony, when not needed for light; and also had caused them to be moved about ceremonially.

All these practices were pronounced by Sir Robert Phillimore to be illegal within *Martin* v. *Mackonochie* and *Sumner* v. *Wix.*

The use of lighted candles on the holy table or on a ledge immediately over it was one of the charges in *Clifton* v. *Ridsdale.*[1] It was not disputed that their use was illegal within the decisions, and it was not attempted in the appeal which was brought before the Privy Council[2] to question those decisions, although as to other points the Privy Council was asked to reconsider its former judgments.

This question, after having been for many years treated as settled, was reopened in the recent case of *Read* v. *Bishop of Lincoln.*[3]

It was there charged and admitted that two lights in candlesticks on the holy table were, without objection on the part of the Bishop (who was celebrating the holy communion), alight from the beginning till after the end of the communion service.

The suit was brought in the Court of the Archbishop of Canterbury, and was heard by the Archbishop, assisted by the Bishops of London, Hereford, Rochester, Oxford, and Salisbury,[4] as assessors, and also by Sir James Parker Deane, the Vicar-General of the province. The

[1] Law Rep. 1 Prob. Div. 316.
[2] Law Rep. 2 Prob. Div. 276.
[3] Law Rep. 1891, Prob. 9; 1892, App. Cas. 644. The proceedings before the Archbishop have been also published in a separate report by Mr. E. S. Roscoe.
[4] Dr. Temple, Dr. Atlay, Dr. Thorold, Dr. Stubbs, Dr. Wordsworth.

arguments occupied eight days in February 1890, and judgment was delivered by the Archbishop on the 21st of November in the same year. The portion of it which related to the present subject was to the following effect: There are two questions: (1) Have such lights as are here complained of ever been lawful since the establishment of the Prayer Book? (2) If so, when (if ever), and how have they been made unlawful? Fresh material has been accumulated in late years, and therefore, though very great weight is to be attached to former decisions, the Court feels bound to base its judgment on an independent examination of all evidence now available. (1) The Injunctions of 1547 effected the extinction of all the many lights theretofore used, including the single light before the reserved sacrament, and ordered the retention of the two. The question what parliamentary authority the Injunctions had is not material: they themselves and the compliance with them are evidence that the lighted lights were not then contrary to law. Cranmer's Visitation Articles in 1547 confirm this. The draft Articles supposed to be of 1549, and clearly drawn up after the passing of the Act of Uniformity (2 & 3 Edw. 6, c. 1) and the establishment of the Prayer Book, have no authority which can be discovered, though on them seem to have been based the Visitation Injunctions of Bishops Ridley and Hooper in 1550.[1] The draft Articles with the Visitation Injunctions shew however that after the Act of Uniformity and the Prayer Book the Injunctions of 1547, with the command to keep the two lights, were received and read in the churches: the lights were legal, and this draft could not make them otherwise. (2) Have they been

[1] 1 Card. Doc. Ann. p. 93.

made illegal? The Act which is supposed to have had that effect is 1 Eliz. c. 2, which by sect. 4 forbade the use of "any other rite, ceremony, order, form, or manner of celebrating of the Lord's Supper openly or privily, or matins, evensong, administration of the sacraments, or other open prayers, than is mentioned and set forth in the said book" (i.e. the Second Book of Edward VI.). But these words (except for the substitution of "celebrating of the Lord's Supper" for "Mass") were in 2 & 3 Edw. 6, c. 1, and it has been shewn that after the passing of that Act the Injunctions of 1547 were still read in churches, and were thought to be in full force. Moreover, the words of the Act are technical words inapplicable to lighted candles. "Order, form, and manner" are the formal titles of the services in the Prayer Book, and what the Act forbids by these words is the saying of the various services according to any other service book. The words "rite and ceremony" are also from the title of the Prayer Book. They are technical liturgical terms, "rite" meaning the text of prayers and scriptures read in church services, "ceremony" an action or act, in which material objects may or may not be used, but not itself any material object.[1] When "ceremony of lights" is spoken of, an active or ceremonial use of lights is meant, not merely their inert presence. The Act of Elizabeth was not supposed to have made the lights illegal, for they were constantly used after it in the Queen's chapel and in many cathedrals, colleges, and domestic chapels. Before the end of Elizabeth's reign the lights had (there is little doubt) become generally disused: there is nothing whatever to shew that the objections to them were based on the Act

[1] See above, p. 46.

of Uniformity. During the reign of James I. lights were used in some chapels, that of Bishop Andrewes among others, but probably not generally. In 1628 and 1629 there were indictments presented against several of the Chapter of Durham under the Act of Uniformity, charging amongst other things the use of lights on the altar, but in each case the Judge (Whitlock in 1628, and Yelverton in 1629) considered that the offence charged was not within the Act and was not indictable.[1] The charges against Laud in 1640 include the use of lighted candles on the altar (which, as appears from the Articles of Evidence, extended to many places), but base the allegation of their illegality on the Injunctions of Elizabeth in 1559[2] and the homily against peril of idolatry, and not on the Act of Uniformity.[3] The result of all the evidence available, including pictures and engravings, is that between 1660 and 1680 candles were common, but there is no account of their being lighted, and that between 1680 and 1737 they were almost as often lighted as not. From 1737 to 1750 we have no evidence. From 1750 to 1847 lighting seems to have been disused. During the latter period comparatively little attention was paid to ritual. There is no trace of their having fallen into any doubt of legality. It appears then that they were legal when and after the Prayer Book became law, and so remained, a scheme to make them otherwise not having been completed, and the Acts of Uniformity having no bearing on them: their very general disuse was due to causes other than legal enactment. They

[1] An account of these proceedings will be found in the Correspondence of Bishop Cosin, published by the Surtees Society in 1869, vol. i. pp. 144–6, 155–160.

[2] See above, p. 20, note.

[3] See Prynne, Canterburies Doome (1646), p. 123.

appear to have been used chiefly in places and on occasions of peculiar dignity, but there was no *privilegium* authorizing such use if unlawful at other times and places. We declare therefore that the law is not broken by the mere fact of two lighted candles, when not wanted for the purpose of giving light, standing on the holy table continuously through the service.

From this judgment there was an appeal to the Privy Council. It was heard on nine days in June and July 1891, before a Committee composed of Lord Halsbury (Chancellor), Lord Hobhouse, Lord Esher (Master of the Rolls), Lord Herschell, Lord Hannen, Lord Shand, and Sir Richard Couch; the Bishops of Chichester (Durnford), St. David's (Jones), and Lichfield (Maclagan) sitting as assessors.

The judgment was delivered by the Lord Chancellor on the 2nd of August, 1892. With regard to the lights it was to the following effect: There is no evidence that these lights were ceremonially used, unless the mere fact that they were alight during the communion service constitutes such use. If there were any evidence to shew that the Bishop was responsible for the lights, it would be matter for grave consideration how far the Archbishop's elaborate exposition of the history of the question, and in particular the decisions of two Judges in 1628 and 1629, have afforded new materials justifying a revision of the judgment in *Martin* v. *Mackonochie*. Here however we think that the Bishop was in no different position from that of any other celebrant (other than the incumbent), and we are not prepared to hold that a clergyman who takes any part in the celebration of divine service in a church in which unlawful ornaments are present necessarily uses

them as a matter of ceremony. The Bishop is not, and manifestly could not, be charged with introducing unlawful ornaments, and the mere fact that he did not object to their use is not an ecclesiastical offence, even assuming that they are illegal.

The appeal on this point was consequently dismissed.

From these decisions it may be collected that—

(1) Candlesticks, and candles unlighted, on the altar are not illegal.

(2) Any ceremonial use of lights during the service, whether by lighting or carrying them about, is illegal.

(3) Probably it would now be held (though the decisions conflict) that the mere presence of two lighted candles on the altar during the communion, though not needed for light, is not a breach of the law.

It is to be observed further that no lights other than those ordered by the Injunctions of 1547 (namely, two upon the altar) can be justified, when not needed for the purpose of giving light: *Sumner* v. *Wix*,[1] *Elphinstone* v. *Purchas*.[2]

I.—Credence Table.

The legality of credence tables was established by the Privy Council in *Liddell* v. *Westerton*,[3] the contrary decision in *Faulkner* v. *Litchfield*[4] being overruled.

[1] Law Rep. 3 Adm. & Ecc. at p. 65.
[2] Law Rep. 3 Adm. & Ecc. at p. 100.
[3] See above, p. 10.
[4] See above, p. 6.

These tables are not mentioned in any of the authoritative documents of the Church of England. It is thought that they were introduced into England in the time of Archbishop Laud or thereabouts.[1] The rubric in the communion service immediately before the Prayer for the Church Militant directs the priest to "place upon the table so much bread and wine as he shall think sufficient," thereby implying that the bread and wine are not to be placed upon the table until that point in the service is reached.

In *Faulkner* v. *Litchfield* a faculty for a credence table was prayed for, but Sir Herbert Jenner Fust declined to pronounce for it, on the ground that it was "an adjunct not recognised by our Church."[2]

In *Westerton* v. *Liddell* both Dr. Lushington and Sir John Dodson were bound by this decision of the Court of Arches, and followed it accordingly;[3] but, Mr. Liddell having appealed to the Privy Council, their Lordships gave judgment on this point to the following effect:[4] We are not prepared to hold that the use of all articles not expressly mentioned in the rubric, although quite consistent with, and even subsidiary to the service, is forbidden; for instance, organs, pews, hassocks, are legal though not mentioned. A credence table is simply a small side-table, on which the bread and wine are placed before the consecration, having no connexion with any superstitious usage of the Church of Rome: it is an adjunct to a communion table rather than to an altar. To place the bread and wine on the table before the service begins, as is commonly done, is not according

[1] See Neal's History of the Puritans (1733), vol. ii. p. 259.
[2] 1 Robertson's Reports, at p. 259.
[3] Moore's Report, at pp. 28, 130.
[4] *Ibid.* at p. 187.

to the order prescribed by the rubric; and a credence table supplies an unobjectionable and convenient means of obeying that order.

Their Lordships accordingly reversed the judgments of the Courts below on this point, thereby overruling *pro tanto* the case of *Faulkner* v. *Litchfield.*

J.—Altar in Side-Chapel.

In the case *Re Holy Trinity Church, Stroud Green,*[1] a faculty was applied for in the Consistory Court of London to authorize the erection of a screen between the chancel of the church and the east end of the south aisle, and across the aisle, and the fitting up of the space enclosed by the screen as a chapel, and the introduction of a communion table into the chapel so formed. The objects for which this chapel was desired were greater convenience when the congregation was small, as at daily prayers and early celebrations of the holy communion, and the diminution of expense in warming and lighting on such occasions.

The application was made, and judgment given by the Chancellor (Dr. Tristram) on the 19th of June, 1887. The judgment was in substance as follows: The rubric and the 82nd Canon[2] clearly contemplate there being only one holy table in a church, and if this had been an application to introduce one into the aisle simply, and not into what is to be practically a chapel, I am not prepared to say that the Court would have been justified in granting it. Side-chapels with altars have

[1] Law Rep. 12 Prob. Div. 199.
[2] See above, p. 5.

been consecrated in many churches, though such consecrations do not constitute legal precedents. Faculties have, however, been granted for such altars in other dioceses, and I think that they are ornaments[1] which, though not prescribed by the rubrics or Canons, may be introduced for use in churches if subsidiary to the performance of the service of the church as prescribed by law, in accordance with the judgment of the Privy Council in *Liddell* v. *Westerton.*[2] I am satisfied here that the holy table for which the faculty is asked will be so subsidiary, and I therefore decree the faculty as prayed.

It is considered essential that such chapel should be thoroughly separated from the body of the church: *Re St. Paul's, Wilton Place,* Trist. Cons. Judg. p. 120.

K.—The Ten Commandments at the East End of the Church.

The 82nd Canon enjoins, "that the Ten Commandments be set up on the east end of every church and chapel, where the people may best see and read the same, and other chosen sentences written upon the walls of the said churches and chapels, in places convenient."

In *Westerton* v. *Liddell*[3] the Court was prayed to direct that the Ten Commandments be set up at the east end of the Church of St. Barnabas.

Dr. Lushington monished the churchwardens to

[1] See above, p. 19, note.
[2] See above, p. 53.
[3] Moore's Report, London, 1857. See above, p. 8.

cause the Ten Commandments to be set up on the east end of the church in compliance with the terms of the Canon. He observed[1] that there was no discretionary power to substitute the end of the nave for the end of the chancel, the construction of the Canon having been fixed by long usage.

This matter was not discussed either in the Court of Arches,[2] or in the Privy Council.[3] A question however afterwards arose as to whether the monition of the Court had been obeyed.[4] In *Liddell* v. *Beal*[5] a complaint was made to the Privy Council that the Ten Commandments were not set up on or against the east end of the church, or over the table, or in any part of the chancel, but were set up on or against the walls on each side of the chancel screen, but outside the chancel at the end of the nave, and in the body of the church. The answer admitted that the Commandments were not set over the communion table, or in any part of the chancel, but alleged that they were set up on or against the east end of the church, namely one portion on each pier of the chancel arch where the people might best see and read the same, in compliance with the monition and Canon. It further alleged that they could not be read by the people if they were placed in any part of the chancel. The reply traversed this last allegation.

The judgment of the Privy Council as to this matter was to the following effect: We are satisfied that if the monition and Canon were literally complied with in the manner contended for, from the nature of the screen

[1] Moore's Report, p. 77.
[2] *Ibid.* p. 131.
[3] *Ibid.* p. 154.
[4] See above, pp. 11, 35.
[5] 14 Moore's Privy Council Cases, 1.

and the opening in the screen, which has not been directed to be removed, the people assembled could not see or read the Commandments so set up; and we are of opinion from the evidence before us that the Commandments are set up as nearly according to the Canon as the nature of the structure will permit: and we think therefore that neither disobedience, nor irregularity, nor evasion, has been established with respect to that circumstance.

The effect of this decision seems to be that when the Commandments cannot practically be read by the congregation if placed on the east end of the church, the Canon will be considered to have been obeyed by their erection in any part of the church which is in view of the congregation.

CHAPTER II.

OTHER DECORATIONS OF THE CHURCH.

A.—CHANCEL-GATES.

ONE of the matters complained of in *Westerton* v. *Liddell*[1] was the presence of brazen gates attached to the chancel screen. They were kept locked, when public worship was not being performed, for the protection of the church furniture and ornaments within the chancel, the church door being open for a large part of the day.

Dr. Lushington[2] said that he was not satisfied that these gates were clearly contrary to law, but that he considered such separations between the chancel and the nave objectionable, and would not advise the Bishop to consecrate a church fitted up according to this example. As, however, they were already in existence, he did not think it necessary to order their removal.

The principle thus laid down has been followed ever since, namely that such gates are neither illegal, nor on the other hand obligatory, and that a faculty for them ought only to be granted where there are special circumstances making such an exercise of the discretion of the Court desirable.

[1] See above, p. 8.
[2] Moore's Report, p. 77.

In the case *Re St. Augustine's, Haggerstone,*[1] in the Consistory Court of London, which was heard on the 27th of February, 1877, a faculty was prayed for to authorize the erection of a chancel screen with gates. It was argued in favour of the gates that chancel screens, which were universal before the Reformation, were necessary still, according to the rubric in the Prayer Book immediately preceding the Order for Morning Prayer,[2] which was first inserted in the Second Prayer Book of Edward VI.; and that gates, being the proper appendages to chancel screens, were also essential. Dr. Tristram, however, in his judgment delivered on the 14th of May, 1877, held that the practice of the Church had been to regard chancel screens as optional, and as to the gates he thought that they might give offence if they were considered as signifying a distinction between chancel and nave in point of sanctity; such a distinction was inconsistent with the undoubted right of a lay rector to the principal seat in the chancel, and he saw no good reason for departing from the general rule established by Dr. Lushington in *Westerton* v. *Liddell.* He accordingly rejected so much of the prayer of the petition as asked the Court to sanction the erection of gates attached to the chancel screen.

In the case of *The Vicar of the Church of the Annunciation, Chislehurst* v. *The Parishioners,*[3] in which Dr. Tristram, acting as Commissary General of the diocese of Canterbury, pronounced judgment on the same day, the learned Judge (the question for his decision being the

[1] Law Rep. 4 Prob. Div. 111.

[2] "The chancels shall remain as they have done in times past."

[3] Law Rep. 4 Prob. Div. 111.

same) took the same course as in the case of St. Augustine's.

In *Bradford* v. *Fry*,[1] which was heard on appeal by Lord Penzance in the Court of Arches in July 1878, a confirmatory faculty was prayed for to sanction the erection of a chancel screen with gates. His Lordship, after saying that he saw no objection to the screen, added, "but I do think that the gates attached to the screen are objectionable for the reasons given by Dr. Lushington in *Westerton* v. *Liddell*;" and the faculty accordingly authorized the retention of the screen without the gates.

In the case *Re St. Agnes', Toxteth Park*,[2] a faculty was applied for in the Consistory Court of Liverpool to place gates of open metal-work between the chancel and the nave. The chancel was very richly ornamented, and the gates were asked for as a protection for it. The Chancellor of the diocese (Dr. Espin), on the 3rd of November, 1885, gave judgment, granting the faculty on the special grounds put forward. He observed, "It must be understood that this decision in not to be regarded as a general precedent."

See also *Re St. John's, Isle of Dogs*, Trist. Cons. Judg. p. 67.

B.—Crosses.

In *Westerton* v. *Liddell*[3] one of the matters objected to was the cross upon the chancel screen in the Church

[1] Law Rep. 4 Prob. Div. 93, see at p. 106. The history of the suit was somewhat complicated, but it is thought unnecessary for the present purpose to pursue it

[2] Law Rep. 11 Prob. Div. 1.

[3] See above, p. 8.

of St. Barnabas. The screen was of wood, and there was a large cross of carved wood on it. Objection was also made, as already mentioned,[1] to altar crosses in the two churches which were in question. As has been already pointed out,[2] in both the Consistory Court and the Court of Arches the question as to the cross on the holy table, and that as to crosses in other parts of the church, were treated as depending on the same considerations.

The judgment of Dr. Lushington on this point[3] assumes that crosses are ornaments and so within the "Ornaments Rubric."[4] It is clear however, as pointed out by the Privy Council,[5] that crosses, when not used in the service, are not ornaments in the technical sense, but decorations, and therefore that the "Ornaments Rubric" has no bearing on the present question. Consequently it seems unnecessary to allude further to Dr. Lushington's judgment, so far as it goes on the hypothesis that the law on the matter is to be found in the rubric. It may, however, be worth while to observe that he declared the inclination of his opinion to be that crosses are not images within 3 & 4 Edw. 6, c. 10.[6] He came to the conclusion that crosses are illegal ornaments.

Sir John Dodson, in the Court of Arches, also assumed that crosses are ornaments,[7] and proceeded to give his opinion at length on the proper construction of the "Ornaments Rubric;" relying on the Injunctions of 1547[8] and 1559,[9] and on the evidence of disuse of

[1] P. 33, *supra*.
[2] P. 34, *supra*.
[3] Moore's Report, p. 29.
[4] P. 17, note, *supra*.
[5] Moore's Report, p. 161.
[6] See above, p. 23.
[7] Moore's Report, p. 87.
[8] See above, p. 23.
[9] See above, p. 20, note.

crosses in the reign of Elizabeth and since that time, as guides to that construction. He declared his opinion that there is no authority for the use of the cross in the church at the present moment, and therefore pronounced against it.

The judgment of the Privy Council on this matter was to the following effect:[1] There were many crosses used in the Roman Catholic ritual, such as altar crosses, processional crosses, funeral crosses, as well as painted or carved crosses set up as architectural decorations. To these latter the "Ornaments Rubric" has no application. It refers solely to the ornaments of the church and the ministers whose use is prescribed by the First Prayer Book of Edward VI. Among such ornaments of the church are Bible, Prayer Book, poor-box, chalice. There is no reason to doubt that 2 & 3 Edw. 6, c. 1, which authorized the First Prayer Book, received the royal assent before the end of the second year of Edward VI. Are crosses forbidden as images by the Injunctions of 1547 and 1559, or by 3 & 4 Edw. 6, c. 10? It cannot be denied that crosses are frequently spoken of amongst images;[2] but the result of the best examination which we have been able to make is that the term "image," though it may be extended by the context, is generally to be understood in a more limited sense. No doubt crosses have been abused, yet they differ widely from images of saints, and crucifixes: they were used as Christian symbols for two or three centuries

[1] Moore's Report, p. 154.

[2] E.g. the Articles Concerning the Laudable Ceremonies used in the Church (1536) mention "images, whether it be of Christ, of the cross, of our Lady, or of any other saint beside": Lloyd, Formularies of Faith, p. xxviii. ed. 1825.

before either crucifixes or images were introduced, and have ever since been used as ensigns of honour and public and private ornaments, without any relation to superstitious, or even to religious usages. It is clear from the Injunctions of 1547 [1] that they refer to images of persons, and only direct the removal of such as had been or should be the object of superstitious worship. When they were issued, the use of the cross was not only permitted but enjoined, as the old services which required it were retained. The Proclamation of 1547–8 [2] applies only to such images as are the subject of the former proclamation; it could not apply to crosses, for the old services were still in use. 3 & 4 Edw. 6, c. 10, relates, in our opinion, to the destruction of images already ordered to be removed, and does not extend the Injunctions and proclamation. After the introduction of the Prayer Book crosses could no longer be lawfully used in the service,[3] and therefore nothing is more likely than that they were often destroyed and stolen. The Injunctions and Visitation Articles of 1559 [4] do not extend the prohibition as to images. Many of the Reformers drew a strong distinction between crosses and crucifixes,[5] though there is no doubt that many of the Elizabethan bishops disliked crosses, and ordered or sanctioned their removal. On the whole we conclude that crosses, as distinguished from crucifixes, when used as mere emblems of Christian faith, and not as objects of

[1] See above, p. 41.
[2] See above, p. 23.
[3] Such use would be a ceremony. See above, p. 36, and note.
[4] See above, p. 20, note.
[5] See for example a letter from Cassander to Bishop Cox in 1560, printed in the second series of the Zurich Letters published by the Parker Society in 1845, at p. 42.

superstitious reverence, may still lawfully be erected as architectural decorations of churches, and that the wooden cross on the screen here objected to, is a mere architectural ornament. As to this therefore we must advise the Queen to reverse the judgment of the Court below.[1]

In *Bradford* v. *Fry*,[2] where the chancel screen was surmounted by a cross, Lord Penzance said:[3] "With regard to the cross on the screen, I can see no evil in it. It is an architectural ornament permissible in churches of the Church of England, and I think ought to be allowed to stand in the position it occupies."

The cross being a lawful decoration, the question in each case is one for the exercise of the discretion of the Ordinary. In some instances this may be affected by the size of the cross proposed to be set up: see the *Chislehurst Case* already referred to.[4]

C.—Crucifixes.

In *Clifton* v. *Ridsdale*[5] one of the matters considered was the lawfulness of a crucifix as a church decoration.

In the church there in question there was a screen of open ironwork, some nine feet high, stretching across the church at the entrance to the chancel; the middle portion of this screen rose to a peak, and was surmounted by a crucifix, or figure of our Saviour on the cross, in full relief, and about eighteen inches long, with the face

[1] For the judgment as to altar crosses, see p. 34, above.
[2] Law Rep. 4 Prob. Div. 93; see above, p. 68.
[3] Law Rep. 4 Prob. Div. p. 106.
[4] P. 67, above.
[5] Law Rep. 1 Prob. Div. 316.

turned towards the congregation. There was further a row of candles, at distances of nearly a foot apart, all along the top of the screen, which was continued up the central and rising portion of it, the last candles coming close up to the crucifix on either side, so that, when the candles were lighted for the evening service, the crucifix stood in full light. It was not shewn that the candles were lighted when not needed in order to give light. The complainants contended that the crucifix and candles were illegal decorations, and also that the position of the candles in relation to the crucifix, and the manner in which they were used, together constituted a ceremonial observance, and as such were not warranted by law.

The suit was heard in the Court of Arches before Lord Penzance on the 4th, 5th, and 6th of January, 1876. His Lordship gave judgment on the 26th of February to the following effect: I do not think that the charge that the candles were ceremonially used is made out. The real question is whether a crucifix placed and lighted as it was here is illegal. The answer depends not on any single passage of a Statute or rubric, but on the general result of the various acts of the sovereign and the legislature which go to make up what is known as the Reformation. In *Westerton* v. *Liddell*[1] the Privy Council, while holding that crosses erected merely as architectural decorations are lawful, carefully distinguished between crosses and crucifixes, and I gather from that case that the views and arguments, upon which the use of the cross was there justified, did not, in the opinion of the Privy Council, afford the same justification to crucifixes. That case was followed in *Phillpotts* v.

[1] See above, p. 8.

Boyd,[1] where the reredos then in question was sanctioned on the ground (1) that it had been set up for the purpose of decoration only, (2) that it was not in danger of abuse by superstitious reverence. The Court in those cases considered, in my opinion, that all figures in sculpture or painting are either lawful as being architectural decorations, or unlawful as being objects of superstitious reverence. The expressions "superstitious reverence," "idolatrous practices," "abuse," used in the judgment in *Phillpotts* v. *Boyd*, have the same meaning as "worship" and "adoration" in the twenty-second Article of Religion.[2] What then was the Romish doctrine concerning worshipping and adoration of images which is reprobated by the Article? The Roman Church has never inculcated the actual worship of an image in place of what it represents. The doctrine referred to must therefore be that by which the adherents of the Roman Church were enjoined then, as they are now, to offer devotion, not to images themselves, but, before images, to God. This is made clear by the decree of the Council of Trent on the subject.[3] This "worship" includes every form or degree in which the object in

[1] Law Rep. 6 Privy Council Cases, 435; see above, p. 21.

[2] See above, p. 25, note.

[3] "De invocatione, veneratione, et reliquiis sanctorum, et sacris imaginibus" (Sess. 25). By this Bishops and others having the care of education are bidden to teach "imagines Christi, deiparae Virginis, et aliorum sanctorum, in templis praesertim habendas et retinendas, eisque debitum honorem, et venerationem impertiendam; non quod credatur inesse aliqua in iis divinitas vel virtus, propter quam sint colendae; vel quod ab eis sit aliquid petendum; vel quod fiducia in imaginibus sit figenda, veluti olim fiebat a gentibus, quae in idolis spem suam collocabant; sed quoniam honos, qui eis exhibetur, refertur ad prototypa quae illae repraesentant; ita ut per imagines quas osculamur, et coram quibus caput aperimus, et procumbimus, Christum adoremus; et sanctos quorum illae similitudinem gerunt, veneremur."

question is made to take a place, or play a part, in the devotions which are paid to God before it. Is the figure here complained of in danger of being an object of worship or superstitious reverence as so defined? Now what is the history of the crucifix in our churches? Before the Reformation it was almost universally set up in churches upon a rood-loft, which was a structure not very dissimilar to the screen now in question, and standing in the same place. It is certain that it was so set up, not as a mere architectural ornament, but as an object of reverence and adoration: the Sarum Use indeed enjoined the worship of it. When we find this object, which was enjoined and put up by authority in every church in England before the Reformation in a particular part of the church, and for the particular purpose of adoration, and is still worshipped by those who adhere to the Roman Church, now proposed to be again set up, after a lapse of three centuries, in the same part of the church, as an architectural ornament only, it is hard not to distrust the use to which it may be put. It is said that the danger of abuse has been taken away by the increased diffusion of knowledge and culture; but knowledge and culture do not prevent the practice of paying devotion to images in the sense explained above from prevailing in the Church of Rome. Moreover, the parish church is not only for the intelligent and cultivated, but also for the weak and ignorant. It is said that crosses are as liable to this abuse as crucifixes, but the Privy Council in *Liddell* v. *Westerton* thought otherwise, and if they had not, the result would have been not to declare crucifixes lawful, but to declare crosses unlawful. The crucifix isolated, and not forming part of a scene, might be so well spared in the mere

decoration of churches that it is not easy to conceive that it should be selected solely for that purpose. I must declare therefore that the crucifix surmounting the screen in this case has not been shewn to my satisfaction to have been set up as an architectural decoration only, and that there does exist a danger and a likelihood that it may be the object of adoration and superstitious reverence. It must therefore be removed; but a removal of the figure, leaving the cross standing, will be a compliance with this order.

In a later part of his judgment Lord Penzance observed that, though he had dealt with the question of the lawfulness of the crucifix as depending entirely on the nature and position of the object, yet the probability of superstitious abuse was largely augmented by the fact that the incumbent of the church had in the conduct of the services been guilty of several illegal practices borrowed from the Roman Church.[1]

Mr. Ridsdale appealed to the Privy Council.[2] The appeal was heard on five days in January and February 1877, before a Committee composed of Lord Cairns (Chancellor), Lord Selborne, Sir J. W. Colvile, Chief Baron Kelly, Sir Robert Phillimore, Lord Justice James, Sir Montague Smith, Sir R. P. Collier, Lord Justice Brett,[3] and Sir R. P. Amphlett. The Archbishop of Canterbury (Tait), and the Bishops of St. Asaph (Hughes), Ely (Woodford), and St. David's (Jones) sat as episcopal assessors.

The judgment was delivered on the 12th of May. The Privy Council concurred with the judgment of

[1] These will be noticed in later sections of this book.
[2] Law Rep. 2 Prob. Div. 276.
[3] Now Lord Esher.

Lord Penzance as to the crucifix, and they selected specially for approval [1] the passage in which he declared his inability to believe that the crucifix had under the circumstances of the case been put up only as an architectural decoration. They added that they thought it important to maintain, as to representations of sacred persons and objects in a church, the liberty established in *Phillpotts* v. *Boyd*, subject to the power and duty of the Ordinary so to exercise his judicial discretion in granting or refusing faculties, as to guard against things likely to be abused for purposes of superstition.

It would perhaps be too much to say that this decision establishes the illegality of the crucifix as a church decoration in every case,[2] but it would no doubt be very difficult to obtain a faculty for its erection, especially on the chancel screen.

D.—The "Stations of the Cross."

It was one of the complaints in *Clifton* v. *Ridsdale* [3] that the respondent had put up in his church a set of fourteen groups in coloured relief purporting to delineate the sufferings of our Lord from his judgment and condemnation to his crucifixion and burial. Some of them represented events for which no authority is to be found in the Gospels; for example, the three falls of Christ under the cross, and the legend of St. Veronica. It was proved in evidence that these fourteen represen-

[1] See at p. 353 of the report.

[2] In the *St. Ethelburga Case* (Trist. Cons. Judg. at p. 71) Dr. Tristram expresses obiter the unqualified opinion that the crucifix is an unlawful decoration.

[3] See above, p. 73.

tations are authorized objects of devotion in the Roman Church.

They had been set up in the church in question without a faculty, and on that ground alone Lord Penzance directed them to be removed; but he also dealt with the question of their lawfulness as follows: I think they are neither mere architectural decorations nor lawful. Some of them, if they stood alone, may be unobjectionable in themselves, but the entire set, viewed as a whole, and in relation to their well-known history, must be regarded, I think, as likely (if not intended) to be used for the purposes for which they always have been used, and not for the mere purpose of decorating the church.

His Lordship left it open to the respondent to apply, if he pleased, for a faculty to authorize such of the group as might turn out to be free from objection.

There was no appeal to the Privy Council on this head.

In *Woodward* v. *Parishioners of Folkestone* [1] Dr. Tristram refused in his discretion to grant a faculty for a painted window representing a priest administering the Eucharist in vestments worn by priests in England in the fourteenth century, on the ground that it represented the performance of a religious rite in a manner not now lawful.

[1] Tristram, Cons. Judg. p. 177.

CHAPTER III.

ORNAMENTS OF THE MINISTER.

VESTMENTS.

BEFORE proceeding to the cases in which this difficult subject has been discussed, it will be convenient to give in chronological order the principal documents from which the law applicable to it is to be collected.

In the First Prayer Book of Edward VI. (1549) the following rubric is prefixed to the communion service: "Upon the day and at the time appointed for the ministration of the holy communion, the priest that shall execute the holy ministry shall put upon him the vesture appointed for that ministration, that is to say, a white alb plain, with a vestment[1] or cope. And where there be many priests or deacons, there so many shall be ready to help the priest in the ministration as shall be requisite; and shall have upon them likewise the vestures appointed for their ministry, that is to say, albs with tunicles."

At the end of the service is the following rubric: "Upon Wednesdays and Fridays the English litany shall be said or sung in all places after such form as is appointed by the king's majesty's injunctions or as is

[1] Vestment and chasuble are synonymous.

or shall be otherwise appointed by his highness. And though there be none to communicate with the priest, yet these days (after the litany ended), the priest shall put upon him a plain alb or surplice, with a cope, and say all things at the altar (appointed to be said at the celebration of the Lord's Supper) until after the offertory. . ."

At the end of the book are the following notes under the heading "Certain Notes for the more plain explication and decent ministration of things contained in this book:" "In the saying or singing of matins or evensong, baptizing and burying, the minister, in parish churches and chapels annexed to the same, shall use a surplice. And in all cathedral churches and colleges the archdeacons, deans, provosts, masters, prebendaries, and fellows, being graduates, may use in the choir, besides their surplices, such hoods as pertaineth to their several degrees which they have taken in any university within this realm. But in other places, every minister shall be at liberty to use any surplice or no. It is also seemly that graduates, when they do preach, should use such hoods as pertaineth to their several degrees. And whensoever the bishop shall celebrate the holy communion in the church, or execute any other public ministration, he shall have upon him, beside his rochet, a surplice or alb, and a cope or vestment, and also his pastoral staff in his hand, or else borne or holden by his chaplain."

In the Prayer Book of 1552 the following note is inserted at the beginning: "And here is to be noted that the minister at the time of the communion, and at all other times in his ministration, shall use neither alb, vestment, nor cope; but being archbishop or bishop,

he shall have and wear a rochet, and being a priest or deacon, he shall have and wear a surplice only."

The 25th section of Elizabeth's Act of Uniformity (1 Eliz. c. 2) is as follows: "Be it enacted that such ornaments of the church and of the ministers thereof shall be retained and be in use as was in this Church of England by authority of Parliament in the second year of the reign of King Edward the Sixth, until other order shall be therein taken by the authority of the Queen's Majesty, with the advice of her Commissioners appointed and authorzied under the great seal of England for causes ecclesiastical, or of the Metropolitan of this realm."

At the beginning of the Prayer Book (1559) authorized by this Act the note is: "And here is to be noted that the minister at the time of the communion, and at all other times in his ministration, shall use such ornaments in the church as were in use by authority of Parliament in the second year of the reign of King Edward the Sixth, according to the Act of Parliament set in the beginning of this book."

The Injunctions of 1559[1] make no order as to vesture to be worn in church;[2] but in 1560 some "Interpretations

[1] 1 Card. Doc. Ann. 210.

[2] The 30th of them contains the following, as to the ordinary apparel of the clergy: "Her Majesty being desirous to have the prelacy and clergy of this realm to be had as well in outward reverence, as otherwise regarded for the worthiness of their ministries, and thinking it necessary to have them known to the people in all places and assemblies, both in the church and without, and thereby to receive the honour and estimation due to the special messengers and ministers of Almighty God, willeth and commandeth that all archbishops and bishops, and all other that be called or admitted to preaching or ministry of the sacraments, or that be admitted into vocation ecclesiastical, or into any society of learning in either of the universities or elsewhere, shall use and wear such

and furthur considerations" of certain of the Injunctions were drawn up by the Archbishop (Parker) and Bishops for the further regulation of the inferior clergy. Strype's opinion (Annals, vol. i. part 1, p. 318, ed. 1824) is that they were framed by Bishop Cox of Ely, and revised by the Archbishop. They contain the following: "That there be used only but one apparel; as the cope in the ministration of the Lord's Supper, and the surplice in all other ministrations." [1]

On the 25th of January, 1564, the Queen wrote a letter to Archbishop Parker.[2] After reciting the great benefits of concord, and that manifest disorders by diversity of opinions, and specially in the external, decent, and lawful rites and ceremonies to be used in the churches, had crept in, the Queen declares her intention to put a stop to these evils by repressing all such diversities, varieties, and novelties as breed nothing but contention, offence, and breach of common charity, and are also against the laws, good usages, and ordinances of the realm. She then goes on to charge the Archbishop in the province of Canterbury ("as the like we will order for the province of York"), after conference with the Bishops and others, to find out what diversities exist either in doctrines, or in rites and ceremonies, or in the manners of the clergy, "and thereupon as the several cases shall appear to require reformation, so to proceed by order, injunction, or censure, according to the order and

seemly habits, garments, and such square caps as were most commonly and orderly received in the latter years of King Edward the Sixth; not thereby meaning to attribute any holiness or special worthiness to the said garments, but as St. Paul writeth, 'Omnia decenter et secundum ordinem fiant.'"

[1] 1 Card. Doc. Ann. p. 238, note.

[2] Strype, Life of Parker, App. xxiv.

appointment of such laws and ordinances as are provided by Act of Parliament, and the true meaning thereof." For the future the Queen orders that no one shall be admitted to any ecclesiastical office, "but such as shall be found disposed and well and advisedly given to common order, and shall also, before their admittance to the same, orderly and formally promise to use and exercise the same office, &c., to the honour of God, the edification of our people under their charge in truth, concord, and unity; and also to observe, keep, and maintain such order and uniformity in all the external rites and ceremonies both for the Church and for their own persons, as by laws, good usages, and orders are already allowed, well provided, and established." The letter concludes: "And in the execution hereof we require you to use all expedition that to such a cause as this is shall seem necessary, that hereafter we be not occasioned for lack of your diligence to provide such further remedy by some other sharp proceedings as shall percase not be easy to be borne by such as shall be disordered: and therewith also we shall impute to you the cause thereof."

In 1566, a document[1] was issued entitled "Advertisements partly for due order in the public administration of common prayers, and using the holy sacrament, and partly for the apparel of all persons ecclesiastical, by virtue of the Queen's Majesty's letter commanding the same, the 25th day of January in the seventh year of our sovereign Lady Elizabeth by the grace of God of England, France, and Ireland Queen," &c.[2] These

[1] 1 Card. Doc. Ann. p. 321.

[2] A keen historical controversy has been raised as to the origin and authority of these Advert sements. To enter at large into this controversy would be outside the scope of the present book. It

Advertisements begin with a preface reciting that the Queen, remembering the necessity of unity of doctrine and uniformity of rites and manners in the services of the Church, and for the clergy "to be of one decent behaviour in their outward apparel, to be known partly by their distinct habits to be of that vocation," had by her letters directed to the Archbishop required that with the help of the other Bishops who were in the Commission for causes ecclesiastical, "some orders might be taken whereby all diversities . . . . might be reformed and repressed; and that thereupon by assent and consent of the persons before said" the orders and rules ensuing had been approved, not "as laws equivalent with the eternal word of God, as of necessity to bind the consciences of her subjects in the nature of them considered in themselves, or as they should add any efficacy or more holiness to the virtue of public prayer, and to the sacraments; but as temporal orders mere ecclesiastical without any vain superstition, and as rules in some part of discipline concerning decency, distinction, and order for the time."

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must be enough to say generally that there is grave doubt whether they ever in fact received the Queen's sanction, or were, or purported to be, a "taking other order" under Sect. 25 of the Act of Uniformity of 1558. On the other hand it is admitted that they were issued by the Archbishop of Canterbury and five other Bishops of the Southern province, that they were regarded soon after their publication as authoritative, and that they are referred to in various official documents, amongst others in the 24th of the Canons of 1603. References to the original authorities will be found in the arguments and judgments in the cases mentioned later in this section, and see also Dr. Cardwell's note (1 Doc. Ann. 321), Lord Selborne's Notes on some Passages in the Liturgical History of the Reformed English Church (London 1878), pp. 12–28, Mr. Parker's Letter in answer to those Notes (Oxford and London 1878), and the Postscript to the same letter (1879).

The orders dealing with the present subject are as follows:[1] "In ministration of the holy communion in the cathedral and collegiate churches, the principal minister shall use a cope with gospeller and epistoler agreeably; and at all other prayers to be said at the communion table to use no cope but surplices.

"Item, that the dean and prebendaries wear a surplice with a silk hood in the choir; and when they preach in the cathedral or collegiate church to wear their hood.

"Item, that every minister saying any public prayers, or ministering of the sacraments or other rites of the Church, shall wear a comely surplice with sleeves, to be provided at the charge of the parish."

These orders occur under the head, "Articles for administration of prayers and sacraments." The Advertisements also contain "Articles for outward apparel of persons ecclesiastical," which deal with the dress to be worn by the clergy "in their common apparel."

The 24th of the Canons of 1603 contains the following: "In all cathedral and collegiate churches the holy communion shall be administered upon principal feast days; sometimes by the bishop, if he be present, and sometimes by the dean, and at some times by a canon or prebendary, the principal minister using a decent cope, and being assisted with the gospeller and epistler agreeably according to the Advertisements published anno 7 Eliz."

The 58th Canon is as follows: "Every minister saying the public prayers, or ministering the sacraments, or other rites of the Church, shall wear a decent and comely surplice with sleeves, to be provided at the

[1] 1 Card. Doc. Ann. p. 326.

charge of the parish. And if any question arise touching the matter, decency, or comeliness thereof, the same shall be decided by the discretion of the Ordinary. Furthermore such ministers as are graduates shall wear upon their surplices, at such times, such hoods as by the orders of the universities are agreeable to their degrees, which no minister shall wear (being no graduate) under pain of suspension. Notwithstanding it shall be lawful for such ministers as are not graduates to wear upon their surplices, instead of hoods, some decent tippet of black, so it be not silk."

In the Prayer Book of 1604 the note at the beginning is the same as that in the Book of 1559, except that the word "king" is omitted.

In the final revision of 1662 the words are: "And here is to be noted, that such ornaments of the church, and of the ministers thereof, at all times of their ministration, shall be retained and be in use, as were in this Church of England, by the authority of Parliament, in the second year of the reign of King Edward the Sixth."

The Act of Uniformity of 1662 (13 & 14 Car. 2, c. 4), to which the Prayer Book was annexed, and which gave it statutory authority, contains no enactment as to ornaments. The 32nd section provides that the Book of Common Prayer and administration of the sacraments and other rites and ceremonies of this Church of England, together with the form and manner of ordaining and consecrating bishops, priests, and deacons heretofore in use, and respectively established by Act of Parliament in the first and eighth[1] year of Queen

[1] The reference is to 8 Eliz. c. 1, authorising the use of the Order and Form for the consecrating of Archbishops and Bishops, and for the making of priests, deacons, and ministers as set forth in the Second Prayer Book of Edward VI.

Elizabeth, shall be still used and observed in the Church of England until the feast of St. Bartholomew, 1662.

It will probably have been perceived from this statement of the material documents that the question in dispute as to vestments is a narrow and definite one, namely, whether the so-called Ornaments Rubric in our present Prayer Book establishes as a rule the practice legally prevailing in the second year of Edward VI., or establishes that rule subject to any modifications which it may have received from legislation subsequent to that year. The course which the discussions have in fact taken, allows a still more exact definition of the point. It has been admitted on all hands, since the decision of the Privy Council in *Liddell* v. *Westerton*, that the reference in the Ornaments Rubric is to the ornaments prescribed in the Prayer Book of 1549 and to nothing else, and on the other hand no modification of the law contained in that book and revived by the Statute of 1558 has been suggested except that alleged to have been introduced by the Advertisements of 1566. The question may therefore be thus stated: Does the Ornaments Rubric direct the use of the vestments prescribed by the Prayer Book of 1549, or does it direct the use of such of them only as are ordered by the Advertisements of 1566?

Before considering the cases in which the question of vestments has been actually raised, it will be proper to notice those other cases in which the meaning and authority of the Ornaments Rubric has been discussed.

It has already [1] been explained in what manner the

[1] P. 69.

rubric came to be discussed in *Westerton* v. *Liddell*. Most of the difficulties felt by Dr. Lushington and Sir John Dodson as to its construction have been (as is generally acknowledged) cleared up by the judgment of the Privy Council as to the meaning of the word "ornaments" therein; and it therefore seems unnecessary to set out in detail the substance of their judgments on the point. It may however be well to extract from them a few statements which may be thought to stand independent of the confusion with regard to the technical language of the rubric.

Dr. Lushington starts[2] with the declaration that the law touching the ornaments of the church is primarily to be found in the direction in the Prayer Book, "And here is to be noted, &c." Originally this direction was confined to the ornaments of the minister, and was afterwards extended to the ornaments of the church. Whatever is therein prescribed ought to be done, and whatever is in any degree inconsistent with what is therein prescribed ought not to be done. No other ornaments save those in use by authority of Parliament in the second year of Edward VI. are permitted. It is undoubtedly true that by referring to the Prayer Book of 1549, the Act of Uniformity of 1662 excluded everything effected between 1549 and 1662, whether by Act of Parliament or by Canon, which could or might have altered what existed in 1549. Nothing done between 1549 and 1662, however lawful during that period, has in itself any force or binding authority after the Statute of 1662 came into operation.

On the same principle the following statements are extracted from the judgment of Sir John Dodson: It

[1] See Moore's Report, p. 28.

is admitted that the rubric is to be deemed the primary law on the point whether any particular ornament is legal. I agree that it recognises the Book of 1549 as being of parliamentary authority in the second year of Edward VI.

The judgment of the Privy Council on this matter was to the following effect: We are satisfied that the word "ornaments" (used in the technical sense *pro quocumque apparatu seu instrumento*) applies, and in this rubric is confined, to those articles, the use of which in the services and ministrations of the Church is prescribed by the [First] Prayer Book of Edward VI. Vestments, books, cloths, chalices, and patens are amongst church ornaments. The Second Prayer Book forbids the use of different vestments by the priest in the performance of the different services, and enjoins the use of a surplice only; and does not expressly mention the paten, chalice, and corporas. The rubric of 1559 and sect. 25 of 1 Eliz. c. 2, were the result of a compromise, by which the services were (with certain alterations) to be in conformity with the Second Prayer Book, but the ornaments of the church, whether those worn, or those otherwise used by the minister, were to be according to the First Prayer Book. The language of the Statute and that of the rubric are not precisely the same, but the meaning is identical. The rubric of 1604 follows the rubric of 1559; that of 1662 follows the Statute: but they all obviously mean the same thing, that the same dresses, and the same utensils or articles, which were used under the First Prayer Book of Edward VI., may still be used. There is no reason to doubt that 2 & 3 Edw. 6, c. 1, received the royal assent in the second year of the king. We entertain no doubt what-

ever as to the meaning of the words "authority of Parliament."

In *Martin* v. *Mackonochie*[1] some observations were made by the Courts which throw light on the question.

Sir Robert Phillimore employed the Ornaments Rubric as an illustration of the weakness of the "argument from disuse,"[2] shewing that the law plainly laid down in the rubric, and expressly declared by the Privy Council in *Liddell* v. *Westerton*, had been habitually disregarded, as indeed had the directions of the Canons of 1603 on this and other matters, though those Canons "could not alter or affect the positive provisions of a Statute."[3] In a later part of his judgment,[4] he refers to and adopts the language of the Privy Council in *Liddell* v. *Westerton* as to the construction of the rubric.

The Privy Council on appeal considered the Ornaments Rubric in dealing with the question raised in the case as to lights.[5] It may be well to give here in full the remarks of their Lordships as to the construction of the rubric, the effect of which has been already stated at the page just referred to.[6]

"The construction of the Ornaments Rubric was very fully considered by this Committee in the case of *Westerton* v. *Liddell*, and the propositions which their Lordships understand to have been established by the judgment in that case may thus be stated:—

"First, the words 'authority of Parliament' in the

[1] See p. 45, above.
[2] See p. 47, above.
[3] See Law Rep. 2 Adm. and Ecc. at p. 175.
[4] *Ib.* p. 220.
[5] See p. 53, above.
[6] See Law Rep. 2 Privy Council Cases, at p. 390. See also p. 18, above.

rubric refer to and mean the Act of Parliament 2 & 3 Edw. 6, c. 1, giving parliamentary effect to the First Prayer Book of Edward VI., and do not refer to or mean Canons or royal injunctions, having the authority of Parliament, made at an earlier period.

"Second, the term 'ornaments' in the rubric means those articles, the use of which in the services and ministrations of the Church is prescribed by that Prayer Book.

"Third, the term 'ornaments' is confined to these articles.

"Fourth, though there may be articles not expressly mentioned in the rubric, the use of which would not be restrained, they must be articles which are consistent with, and subsidiary to, the services: as an organ for the singing, a credence table from which to take the sacramental bread and wine, cushions, hassocks, &c.

"In these conclusions, and in this construction of the rubric, their Lordships entirely concur."

In *Westerton* v. *Liddell* and *Martin* v. *Mackonochie* the ornaments of the church, as distinguished from those of the minister, were alone considered. In *Elphinstone* v. *Purchas*,[1] for the first time, the ornaments of the minister were brought under discussion, and for the first time (speaking only of modern cases) the bearing of the Advertisements of 1566 upon the Ornaments Rubric was debated.

The vestments complained of in that case were cope, chasuble, alb, tippets, coloured stoles, dalmatic, tunicle, girdle, amice, maniple. It was also charged that all these things were worn and varied as matter of ceremony.

[1] Law Rep. 3 Adm. and Ecc. 66.

The case was argued in the Court of Arches on the 27th and 29th of November, 1869, the defendant not appearing. On the 3rd of February, 1870, Sir Robert Phillimore, the Dean of the Arches, gave judgment (so far as concerned vestments) to the following effect: It is admitted that the Ornaments Rubric contains the law as to this matter. No one, uninfluenced by considerations arising from supposed consequences, could doubt that the meaning of the rubric is what it was declared by the Privy Council in *Liddell* v. *Westerton* to be, namely that the same ornaments as were used under the First Prayer Book of Edward VI. may still be used. So it was understood at the time, as is plain from the objections of the Puritans[1] and from the "considerations" suggested by the House of Lords.[2] The reading of the rubric which has been contended for is "that all ornaments which were in use at the time when Charles II.'s

[1] Among the exceptions to the Prayer Book by the Presbyterian ministers who took part in the Savoy Conference in 1661 was the following against the Ornaments Rubric in the form in which it appears in the Prayer Book of 1604: "Forasmuch as this rubric seemeth to bring back the cope, alb, &c., and other vestments forbidden by the Common Prayer Book, 5 & 6 Edw. VI. . . . we desire it may be wholly left out": Cardw. Hist. of Conferences, 3rd ed. p. 314.

[2] The "considerations" referred to were suggested, not by the House of Lords, but by a committee of divines appointed by that House in 1641 to consider innovations in the Church. Among the "considerations" was this: "Whether the rubric should not be mended where all vestments in time of divine service are now commanded which were used, 2 Edw. VI.": Cardw. Hist. Conf. p. 274. It is to be noticed that this committee does not suggest that the rubric was in any way modified by the Advertisements of 1566; indeed, in describing the innovations which had been introduced, they say expressly that the innovators pretended "for their innovations the Injunctions and Advertisements of Queen Elizabeth which are not in force but by way of commentary and imposition": *Ib.* p. 273.

Act of Uniformity was passed were henceforth to be retained and used if they were likewise contained in the first book of Edward VI." It is no answer to the objection that this is contrary to the plain meaning of the words to say that otherwise Roman usages would be introduced, for even if such considerations were admissible on a question of construction, the fact that an English usage is also a Roman one is no proof that it is illegal, as I explained in *Martin* v. *Mackonochie*.[1] If such arguments are to be used at all, I may remark that the vestments of the Reformed Church of Scandinavia are far more gorgeous than those prescribed by the Prayer Book of 1549. If a cope is Romish or superstitious in a parish church, it is so likewise in a cathedral, and there, according even to the argument of the promoters, it is lawful and indeed obligatory at the holy communion. It is not disputed that by 1 Eliz. c. 2, the vestments of 1549 came into lawful use, but it is said that the Queen "took other order" under the power reserved by that Statute. Such order must have been taken either (1) by the Injunctions of 1559, or (2) by the Advertisements of 1564–5,[2] or (3) by the Canons of 1603, or (4) by the Canons of 1640. The Advertisements were chiefly relied on in argument, and next to them the Canons of 1603. The Injunctions of 1559 were, I think, issued by royal authority alone, and have no statutory force; and they (apart from the Interpretations)[3] contain no order as to vestments. The same applies to the Canons of 1640. The object of the Advertisements was to secure as great an amount of decent ritual as the

[1] See p. 46, above.
[2] 1566 is the right date.
[3] See p. 81, above.

circumstances of the time would permit. It was a time of widespread disregard of the rites and ceremonies enjoined by the law. The Queen refused her official sanction to the Advertisements, and left them to be enforced by the authority of the Archbishops and Bishops. They were strenuously objected to by the Puritans. Archbishop Parker never suggested that they were issued under statutory authority: nor has any legal treatise of authority, or any judgment of a court of justice, pronounced that they were issued under the conditions required by the Statute of Elizabeth. Whether they had binding authority or not, they contain no words such as appear in the rubric of 1552 prohibiting the use of other ornaments than those mentioned, and it is clear from the whole history of the time that they were intended to provide for a minimum, and not a maximum. Precisely the same reasoning is applicable to them in this respect as was applied by the Privy Council in *Liddell* v. *Westerton* to the Canon with regard to altar-cloths, namely, that a direction to use one thing does not forbid the use of another thing in addition.[1] When the Advertisements intended to prohibit, they did so expressly, as in the prohibition from using copes at prayers said at the communion table when there is no celebration.[2] As to the Canons of 1603: first, they contain no prohibitory words; second, it is (to say the least) questionable whether the words "by authority of the Queen's Majesty," in 1 Eliz. c. 2, s. 25, could confer any power on a succeeding monarch; third, these Canons were made in Convocation with the consent of the Crown under 25 Hen. 8, c. 19, and it is impossible to hold that the mere

[1] See p. 14, above.
[2] See p. 85, above.

fact that the Crown gave this consent makes them an execution of a power conferred by a totally different Statute; fourth, the advice by which the Queen, under the Act of Elizabeth, was to "take other order" cannot have been given for the Canons, because the Metropolitan was not a member of the Convocation in which they were made, the See of Canterbury having been vacant at the time; fifth, a subsequent Statute which expressly revived a prior Statute inconsistent with the Canons impliedly repealed them. Then can any argument unfavourable to the defendant be founded on the presence in the rubric of 1662 of the words "shall be retained," which are found in the Statute, though not in the rubric, of Elizabeth? In my opinion the variance is merely verbal, and the words are treated simply as an amplification of "be in use." So thought the Privy Council in *Liddell* v. *Westerton*, for they expressly declare that the Statute and rubric of Elizabeth mean the same thing. It is urged, however, that these words indicate that the intention of those who inserted them was that such only of the ornaments prescribed by the Prayer Book of 1549 should be kept as were in use *de facto* at the time of the Restoration. But at that time the Presbyterians and Independents were in possession of the churches, nor could Catholic doctrine or ritual be found in them until after St. Bartholomew's Day, 1662.[1] Then does the rubric imply that what was *de jure* in use at the time of its making is to be retained? If I am right in what I have said as to the Advertisements and

[1] This is not accurate; the ritual enjoined by the Prayer Book of Elizabeth was to be followed until the day mentioned: s. 32 of the Act of Uniformity, 1662, see above, p. 86. It is to be noted that there is no mention of the Advertisements in that section.

Canons, the meaning would be the ritual prescribed by the Statute and Prayer Book of Elizabeth. It is not pretended that the words "shall be retained" in the last-mentioned Statute referred to what was then in use *de jure*. But in truth the meaning of this rubric has been solemnly decided by the Privy Council in *Liddell* v. *Westerton* and *Martin* v. *Mackonochie*, and the sole question is, Are these ornaments of the minister to be found in the First Prayer Book of Edward VI.? But it is said that *Liddell* v. *Westerton* only dealt with ornaments of the church. The language, however, of the rubric is exactly the same as to both kinds of ornament. Then it is urged that the Visitation Articles of the Bishops since 1662, and the non-usage of the vestments, afford a "*contemporanea expositio*" of the law which shews that they are illegal. The Visitation Articles (like the Advertisements and the Canons) were limited by the desire of their authors to secure what they could of decent ritual, and this limitation by no means proves that they held anything further to be illegal. No amount of desuetude can repeal a Statute. Exposition by usage can only be resorted to when an enactment is ambiguous: here it is perfectly plain. Moreover the disuse relied upon is accounted for by the character of the times.[1] In any case the argument proves too much: for it would equally shew that the cope is unlawful in cathedrals, that the use of the surplice in preaching is unlawful, and that the black gown (for which there is no warrant in law) is legal.[2] A conspicuous instance of the fallacy

[1] See p. 47, above.

[2] The learned Judge might have added to his instances the black stole, which is admitted on all hands to be an illegal ornament, but yet has been very generally, if not universally, worn until lately.

of this argument is the case of credence tables.[1] They had fallen into practically universal disuse at the time of the decision in *Liddell* v. *Westerton*, and accordingly a practice had been introduced of placing the elements on the holy table before the beginning of the service: yet the Privy Council pronounced this practice to be illegal, and credence tables to be lawful. The same view was taken in the same case as to crosses, the disuse of which in our churches was conclusively proved. The effect of the rubric in bringing back the vestments of Edward VI. was pointed out by the Puritans in the time of Charles I., and it has never been denied by any ecclesiastical or judicial authority, or any legal Commentator, that it had this effect. On the contrary, the authorities support the opposite opinion.[2] What then

[1] See p. 60, above.

[2] The learned Judge referred to Burn's Ecclesiastical Law, Stephens' Annotated Prayer Book, and a judgment of the Bishop of Exeter in 1864. Burn, Eccl. Law (1763), vol. ii. p. 276, quotes the 58th Canon, and proceeds: "But this Canon (which is somewhat observable) is in part destroyed by the Statute law, and by the rubric before the present common prayer." He then sets out 1 Eliz. c. 2, s. 25 (remarking that the "other order" as to this matter was never taken), and the Ornaments Rubric in the present Prayer Book, and goes on: "Therefore it is necessary to recur in this matter to the Common Prayer Book established by Act of Parliament in the second year of King Edward the Sixth. In which there is this rubric, 'In the saying,'" etc. (see p. 80, above), "So that in marrying, churching of women, and other offices not here specified, and even in the administration of the holy communion, it seemeth that a surplice is not necessary. And the reason why it is not enjoined, for the holy communion in particular is because other vestments are appointed for that ministration, which are as followeth: 'Upon the day,' &c." (see p. 79, above). "(Note, the alb differs from the surplice in being close sleeved.) 'And whensoever the bishop,' &c." (*ib*).

Mr. Stephens, in his annotated edition of the Prayer Book (1849), vol. i. p. 367, after quoting the directions in the first book of Edward VI. as to vestments, continues: "All the rubrics just

are the ornaments which are lawful as being mentioned in the first book of Edward VI.? They are for ministers

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quoted were omitted in 1552, and never appeared again. The only rubric respecting ornaments in the Second Common Prayer Book of Edward VI., confirmed likewise by Act of Parliament, was directed against the use of the cope and pastoral staff. These ornaments, however, were again introduced by the rubric of 1559, which brought us back not to the second book of Edward VI., but to the first. And this rubric of 1559, slightly altered, was a second time authorized at the last review. Copes were worn at Durham and Westminster till the middle of the last century, and copes are now worn by the Bishops at the coronations; indeed, all the directions contained in the first book of Edward VI. as to the ornaments of the church and of the ministers thereof at all times of their ministration are by Statute 14 Car. 2, c. 4, the statute law of the Anglican Church." He then mentions the opinion of Bishop Mant, in his edition of the Prayer Book (1820), that the Ornaments Rubric, inasmuch as it refers to 1 Eliz. c. 2, s. 25 [though the Bishop notices that the words "according to the Act of Parliament set in the beginning of this book," which appear in the rubric of 1559, are omitted], under which the Advertisements, "though not perhaps just in the method prescribed in that Act," were a "taking other order," is limited by those Advertisements, as well as by the disuse of the ornaments openly and constantly permitted by "our governors in the Church," and proceeds: "The irresistible answer to Bishop Mant's argument is this, that neither the governors in the Church nor usage can supersede the positive enactments of the statute law."

In a proceeding in 1864 under the Clergy Discipline Act, in which one of the matters complained of was the use of the surplice in the pulpit, the Bishop of Exeter (Dr. Phillpotts), in his judgment, said, after stating the rubrics and Statutes bearing on the point, "From this statement it will be seen that the surplice may be objected to with some reason; but then it must be because the law requires the alb and the vestment or the cope. Why have these been disused? Because the parishioners—that is the churchwardens, who represent the parishioners—have neglected their duty to provide them; for such is the duty of the parishioners by the plain and express canon law of England (Gibs. Cod. p. 200). True, it would be a very costly duty, and for that reason most probably churchwardens have neglected it, and archdeacons have connived at the neglect. I have no wish that it should be otherwise. But, be this as it may, if the churchwardens shall perform

below the order of Bishops, when officiating at the communion service, cope, vestment or chasuble, surplice, alb, and tunicle: in all other services the surplice only, except that in cathedral churches and colleges the academical hood may be also worn. All other vestments, including all stoles, are unlawful. As to the biretta, it appears to me as innocent an ornament as a hat, or wig, or velvet cap. I do not think it unlawful.

Against this part (amongst others) of the decision of the Court of Arches an appeal (under the name *Hebbert* v. *Purchas*) was brought to the Privy Council.[1]

It was heard (Mr. Purchas not appearing) on five days in November 1870, before Lord Hatherley (Chancellor), the Archbishop of York (Dr. Thomson), the Bishop of London (Dr. Jackson), and Lord Chelmsford. Judgment was delivered by the Lord Chancellor on the 23rd of February, 1871, to the following effect: The Advertisements were very actively enforced, and under them chasubles and albs were systematically destroyed. There is abundant evidence that within a few years after they were issued the vestments used in the Mass entirely disappeared. The Puritans indeed, in their zeal against the surplice, sometimes maintained that there was no more authority for it than for the other vestments of 1549, and that the Queen had never assented to the Advertisements. But if the Queen's mandative letters

this duty, at the charge of the parish providing an alb, a vestment, and a cope, as they might in strictness be required to do (Gibs. Cod. p. 201), I shall enjoin the minister, be he who he may, to use them. But until these ornaments are provided by the parishioners, it is the duty of the minister to use the garment actually provided by them for him, which is the surplice": Stephens Eccl. Stat. vol. ii. pp. 2049, 2050.

[1] Law Rep. 3 Privy Council Cases, p. 605.

preceded the compilation of the Advertisements, and if they were afterwards enforced as by her authority, her assent must be presumed, though no doubt she hesitated before giving it. The complaints of the Puritans are always against copes and surplices, never against the alb or chasuble. So the correspondence with foreign reformers, known as the Zurich Letters, is solely concerned (as to apparel) with copes and surplices. The Canons of 1603–4, while implicitly sanctioning the Ornaments Rubric contained in the Prayer Book of 1604 which they authorized, have their special provisions for the vesture of the minister.[1] It is needless to quote authorities to prove that there was no attempt to revive the chasuble, alb, or tunicle between 1604 and 1662. The Dean of the Arches assumes that it was to the rubric in its present form that the Puritans at the Savoy Conference objected, but it was in fact to the rubric of 1604. The Bishops' answer was that the rubric should continue as it was. They did, however, in fact recast it entirely, adopting the form in the Statute 1 Eliz. c. 2, and thus omitting the words which seem to differentiate the holy communion from the other services, and also introducing the word "retained." It is clear therefore that the Puritans objected to a rubric differing from the present, and that after their objection it was altered. From that time it is abundantly clear that the vestments in question were not used at all. All the Visitation Articles of the Restoration period shew that the surplice alone was to be used, and that any deviation from that use was on the side, not of excess, but of defect. We refer especially to the inquiry by Bishop Cosin: "Have you a large and decent surplice (one or more) for the minister to

[1] See p. 85, above.

wear at all times of his public ministration in the church?"[1] Even if the Advertisements were not officially assented to by the Queen, yet inasmuch as they were acted upon under a number of Royal Commissions and with the approval of the Metropolitan, we think they were a "taking other order" within 1 Eliz. c. 2, s. 25. They were undoubtedly enforced and submitted to as of legal obligation, and they are expressly recognised by the 24th Canon. The destruction of the vestments in question under the Advertisements shews that their object was not to secure a minimum ritual, leaving a more complete one open to those who might wish to use it, but to remove utterly the ornaments which they did not order. When they prescribed the surplice only, they meant what they said.[2] The doctrine of a minimum and maximum ritual is inconsistent with the desire of the authorities for uniformity, and with the fact that the rubric is a positive order under a penal Statute. The Canons of 1603 sanctioned the Prayer Book, and therein the Ornaments Rubric, and also by express mention the Advertisements of 1566. The intention cannot have been to set up a contradictory

[1] These Articles were issued in 1662, and will be found in vol. iv. of the edition of Cosin's works published at Oxford in 1851. The article quoted is at p. 508, tit. 1, art. 6. Art. 7 is: "Have you in your vestry a hood or tippet for the minister to wear over his surplice, if he be a graduate?" In tit. 3, art. 4 (p. 510), the question is put: "Doth he" (the minister) "always at the reading or celebrating any divine office in your church or chapel constantly wear the surplice, and other his ecclesiastical habit according to his degree? And doth he never omit it?" It will be observed that the hood is authorized in parish churches by the Canons, though not by the Advertisements.

[2] The introduction of the word "only," which is the foundation of this argument, has no support from the language of the Advertisements themselves.

rule by prescribing vestments in the Prayer Book and a surplice in the Canons which authorized the Prayer Book, nor can it have been intended, in recognising the legal force of the Advertisements, to bring back that which they had taken away. The Canons and Prayer Book must be read together, and the Canons on the vesture of the ministers must be held to be an exposition and limitation of the Ornaments Rubric. Such is proved by the universal practice of the time to have been considered to be the meaning of the Canons. In what sense and in what degree did the present rubric revive the rubrics of the Prayer Book of 1549? There seem to be three opinions on this point. The first is that adopted by Dr. Lushington and Sir John Dodson in *Westerton* v. *Liddell*, that in reviving the rubrics of 1549, the Act of 1662 excluded and repealed all legislation of every kind which had been passed between those dates. If this be so, there has been a continuous, open, and unquestioned violation of the law since 1662, not only by a multitude of those who have declared their unfeigned assent to it, but by the framers of it themselves, immediately after its promulgation. The idea of the repealing power of this rubric is modern. The 24th section of the Act of Uniformity, 13 & 14 Car. 2, c. 4,[1] shews that the

[1] "And be it further enacted by the authority aforesaid that the several good laws and Statutes of this realm which have been formerly made, and are now in force for the uniformity of prayer and administration of the sacraments within this realm of England and places aforesaid shall stand in full force and strength to all intents and purposes whatsoever for the establishing and confirming of the said book, intituled *The Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church, according to the use of the Church of England; together with the Psalter or Psalms of David pointed as they are to be sung or said in Churches, and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons*

legislature did not intend to repeal past laws. The Canons had the same force after that Act as before it. Many of the Visitation Articles of the Bishops issued after it refer to the 58th Canon as in full force. The second opinion is that to which Sir Robert Phillimore seems to have inclined, namely, that the Canons and the Act of Uniformity being irreconcileable set up two standards of ritual, a plain one as a minimum, and a more ornate one as a maximum. This, however, is contrary to the uniformity which Parliament at the Restoration was so earnestly determined to maintain. The third opinion remains, namely, that the provisions of the rubrics of 1549 are continued so far as they are not contrariant to other provisions still in force. Both in the Statute of Elizabeth and in the present rubric the word "retain" seems to mean that things should remain as they were at the time of the enactment; and it is reasonable to presume that the rubric was not altered without a purpose. Apart however from this, we think that the rubric and the Canons must be read together, with the result that the cope is to be worn at the holy communion on high feast days in cathedral and collegiate churches, and the surplice in all other ministrations. The uniform practice from the time of Elizabeth down to about 1840, is in accordance with this view, and irreconcileable with the others, and though usage cannot repeal a statute, it is of great weight in construing obscure documents. In *Liddell* v. *Westerton* the question

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hereinbefore mentioned to be joined and annexed to this Act, and shall be applied, practised, and put in ure for the punishing of all offences contrary to the said laws with relation to the book aforesaid and no other."

of vestments was not before the Court. In *Martin* v. *Mackonochie* the Committee stated anew the substance of the judgment in *Liddell* v. *Westerton*, but did not propose to take up any new ground. As to the biretta, which the respondent is said to have carried in his hand, but not to have worn in church, we should not be justified on the evidence before us in pronouncing that he did an unlawful act.

Mr. Purchas afterwards petitioned the Judicial Committee to rehear the appeal, on the ground that he had been prevented by lack of means from employing counsel at the former hearing, and that the decision was at variance with former decisions of the Committee. The Committee refused the petition on the ground of "the great public mischief which would arise on any doubt being thrown on the finality of the decisions of the Judicial Committee." [1]

In the second suit, *Martin* v. *Mackonochie*,[2] it was charged (*inter alia*) against Mr. Mackonochie that he had worn the vestments pronounced by the Privy Council in *Hebbert* v. *Purchas* to be illegal. His counsel requested the Judge to hear argument impugning the decision of the Privy Council. Sir Robert Phillimore gave his judgment on this point on the 27th of November, 1874, to the following effect: Inasmuch as the judgment of the Privy Council in *Hebbert* v. *Purchas* was delivered on the hearing of an *ex parte* case, and as it has been suggested that that judgment is irreconcileable with former decisions of the same tribunal, and can be shewn to be founded on mistakes of fact as well as of law, it would, I think, be competent

[1] Law Rep. 3 Privy Council Cases, p. 671.
[2] Law Rep. 4 Adm. and Ecc. p. 279.

to this Court to allow a re-argument of these questions. It appears to me that the judgment in *Hebbert* v. *Purchas* as to the ornaments of the minister is irreconcileable with *Liddell* v. *Westerton*. I do not, however, deem it expedient to hear such a re-argument, for the point can be taken before the Privy Council, and that tribunal can rectify its own errors, if it has made any.

The matter was not carried further.

In *Clifton* v. *Ridsdale*[1] the wearing of the alb and chasuble at the holy communion was one of the matters charged against the defendant. His counsel admitted that the decision in *Hebbert* v. *Purchas* was directly in point, and therefore offered no agument on this head, reserving to themselves the right of challenging the correctness of that decision before the Privy Council. Lord Penzance, however, in giving his judgment, made some remarks on this matter, to the following effect: Dr. Lushington, Sir John Dodson, and Sir Robert Phillimore have all declared the "Edwardian vestments" to be lawful. The very strong Judicial Committee which heard the appeal of *Liddell* v. *Westerton* expressly pronounced that "the same dresses and the same utensils or articles which were used under the First Prayer Book of Edward VI. may still be used." In *Martin* v. *Mackonochie*, the Privy Council expressed their entire concurrence with the construction of the Ornaments Rubric in *Liddell* v. *Westerton*. This, which was but a dictum, though an important one, in *Liddell* v. *Westerton*, was in *Martin* v. *Mackonochie* an essential part of the decision. With this decision *Hebbert* v. *Purchas* appears to be directly in conflict, but it must be borne in mind that *Martin* v. *Mackonochie* dealt with

[1] See p. 73, above.

things used in the church services (as candles), while *Hebbert* v. *Purchas* dealt with the dresses of the minister, as to which the Canons of 1603 had given certain directions, and it was to those Canons that the Court seems to have ascribed the authority to qualify the subsequent Statute and rubric in respect of dresses or vestments. The very summary notice of *Martin* v. *Mackonochie* in the judgment in *Hebbert* v. *Purchas* seems to favour the conclusion that the case was considered unimportant to the matter in hand, rather than that it was meant to be overruled. At any rate, I am bound by *Hebbert* v. *Purchas*, as being directly addressed to the matter in issue here, and also as being the last pronounced. I therefore follow it without expressing my own opinion on the subject.

Mr. Ridsdale accordingly appealed to the Privy Council.

Their Lordships, after declaring that they had come to the conclusion that though very great weight ought to be given to the decision in *Hebbert* v. *Purchas*, yet they ought to hold themselves at liberty to examine the reasons upon which it was arrived at, and if they should find themselves forced to dissent from them, to decide on their own view of the law, went on to deal with the charge as to vestments in the following manner: The appellant contends that the present Ornaments Rubric is now the only law as to the vesture of the clergy, and sweeps away all previous law on the subject. This we think a misapprehension. First, it must be noticed that the dresses referred to in the rubric are not authorized merely, but enjoined; there is no option given to the minister. On the accession of Elizabeth the legislature determined at once to restore the liturgy

and offices contained in the Prayer Book of 1552, but to leave the question of the vesture of the minister for further consideration. Accordingly the vestures in use before 1552 were "retained" by 1 Eliz. c. 2, s. 25. No new Prayer Book was annexed to that Statute, but the book of 1552, with a few alterations ordered by the Act, was directed to stand. Those who issued the Prayer Book in 1559 prefixed to it a copy of the Statute of Elizabeth, and also, by way not of enactment, but of memorandum or reference to the Statute, substituted a new note for that immediately preceding the Order of Morning Prayer in the book of 1552. This note had no parliamentary authority,[1] and was only so far valid as it accurately represented the effect of the Statute. That Statute in its enactment on this subject was in its nature provisional. Did Elizabeth ever "take other order" under it? We are clearly of opinion that she did so by the Advertisements of 1566 issued with the advice of the Metropolitan. No particular form was required by law in which she was to take order, and it was competent to her to do so by a letter addressed to the Metropolitan. The Advertisements were issued by the Bishops as having been prepared under her authority. We draw from the historical evidence the conclusion that the Queen did sanction them in fact. The command in the Advertisements to wear a surplice at the communion impliedly forbids the use of alb or chasuble, for those garments cannot reasonably be worn with the surplice.[2]

[1] Gibs. Cod. p. 297. The Bishop adds: "Which clause somewhat altered (as we see) did in 13 & 14 Car. 2, become part of the Book of Common Prayer, by authority of Parliament, and not before."

[2] It has been pointed out, however, that in a Constitution of Archbishop Reynolds (Lynd. Prov. p. 236), there is a direction, "nullus clericus permittatur ministrare in officio altaris nisi in-

It is said that the Advertisements purport to legislate on other matters which are not within sect. 25 of the Act of Elizabeth; but whether this be so or not, we think it immaterial. The proof of the subsequent reception and enforcement as law of the order established by the Advertisements as to the dress to be worn at the communion from 1566 down to the Great Rebellion, and from the Restoration to St. Bartholomew's Day, 1662, is complete;[1] and from a consideration of the whole historical evidence it appears to us that the conclusion drawn in *Hebbert* v. *Purchas* that the Advertisements on this subject had the force of law under 1 Eliz. c. 2, s. 25, is not only warranted but irresistible. We do not think that this conclusion is affected by the fact (which has been established before us) that the destruction of albs, vestments, and copes, relied on in *Hebbert* v. *Purchas*, took place before the promulgation of the Advertisements. From 1566 to 1662 then the law was contained in 1 Eliz. c. 2, s. 25, as modified by the reading into it of the prohibition of albs, vestments, and tunicles, and of

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dutus sit superpellicio," and that at that time chasuble, dalmatic, and stole were notoriously in general and lawful use. The supposed prohibition in the Advertisements is certainly very faint, especially by contrast with the express prohibition which they contain of copes at prayers said at the communion table when there is no celebration (p. 85, *supra*). Compare also the rubric of 1552.

[1] It may be doubted whether there is evidence of any change, by way of disuse of ornaments, simultaneous with the promulgation of the Advertisements; in other words, whether there is anything to shew that the vestments supposed to have been forbidden by the Advertisements were worn between the accession of Elizabeth and 1566. Bennett (Paraphrase, p. 6; see below, p. 114, note) states that they had not been worn since the publication of the Second Prayer Book of Edward VI. Accordingly, as stated in the text, they were generally destroyed before the promulgation of the Advertisements.

copes, except in cathedral and collegiate churches, to be collected from the Advertisements. It is to be noted that the rubric itself was never expressly altered during all this long period. Did then the rubric of 1662 repeal 1 Eliz. c. 2, s. 25, and all that had been done under it? The history of the revision of the Prayer Book is strongly opposed to such a conclusion. At the Savoy Conference the Puritans by the eighteenth of their general exceptions [1] objected specially to three things: (1) the surplice (2) the sign of the cross in baptism; (3) kneeling at the holy communion. Following up the general exceptions by detailed objections, they attacked the Ornaments Rubric as seeming to bring back the vestments of 1549.[2] Baxter seems to suggest that the express mention of the communion in the rubric was what gave most offence.[3] The Bishops appear to have taken little notice of the particular objection, but in answer to it they refer to their reply to the general exception, and say that for the reasons therein given, they think it fit

[1] Cardw. Hist. Conf. 3rd ed. p. 310.

[2] See above, p. 92, note.

[3] This is a remarkable instance of misquotation. The words of the judgment (Law Rep. 2 Prob. Div. p. 322), are: "Baxter (History of Life and Times, p. 155) seems to treat the objection as having been founded on the words in the rubric 'at the time of the Communion.' 'They excepted,' he says, 'against that part of the rubric which, *speaking of the sacraments to be used in the church*, left the room to bring back the cope, alb, and other vestments.'" The italics are in the report of the judgment. Now in the first place their Lordships have taken Calamy's "Abridgement of Mr. Baxter's History of his Life and Times" for the original. The words quoted are not in the original at all, but are Calamy's account of the substance of the exceptions by the Puritans at the Savoy Conference (printed at pp. 321, *sqq.* of Baxter's Life), and add nothing therefore to those exceptions. In the second place the passage is not even correctly transcribed, for the word "sacraments," on which the whole argument is based, has been substituted for "ornaments."

that the rubric continue as it is.[1] No one could think that they intended covertly to change the law as to vesture by alterations apparently verbal and trivial in the rubric.[2] The preamble of 13 & 14 Car. 2, c. 4, recites that the Commission to review the Prayer Book had been granted, "for settling the peace of the Church, and for allaying the present distemper which the indisposition of the time hath contracted." This object would not have been gained by the revival of ornaments long disused, and associated by very many persons with the idea of superstition. Moreover it can hardly have been expected that the desired certainty of rule and agreement in practice would be attained by a vague reference to a Prayer Book not generally accessible.[3] There is nothing in the Preface to the Prayer

[1] Cardw. Hist. Conf. p. 351.

[2] This assumes that what they were dealing with was the rubric as amended by the Advertisements of 1566. The alterations (such as they were) in the rubric itself were rather unfavourable than favourable to the vestments, and were as such relied on by the Judicial Committee in *Hebbert* v. *Purchas*. The reasoning of that judgment on this point, however, was disavowed in *Ridsdale* v. *Clifton*, because it was perceived that the law before 1662 was contained, not in the rubric, but in the Statute of 1559, and that that Statute and the rubric of 1662 are (with the exception to be noticed presently) identical.

[3] It cannot fail to be observed with regard to this argument, that according to the judgment there must still be a reference to the Prayer Book of 1549, a reference made less, and not more, easy by the necessity of also referring to the Advertisements of 1566. As to the "accessibility" of these latter, Hearn, in the preface to Camden's Annals of the Reign of Elizabeth (1717), says, referring to the Advertisements, "(manifestum est) monitiones istas seorsim editas (nam editionem in collectione Sparroviana nihil moror) non sine summa difficultate apud bibliopolas comparari posse." The "Collectio Sparroviana" is Bishop Sparrow's "Collection of Articles, Injunctions, Canons, Orders, Ordinances, and Constitutions Ecclesiastical, with other Records of the Church of England," of which the first edition was published in 1661.

Book which suggests any reason why the obsolete vestments should be restored. The Statute of Elizabeth (1 Eliz. c. 2) is reprinted in full at the beginning of the book as an unrepealed and effective law, and the Ornaments Rubric, remaining in the same place as formerly, seems to retain its former office namely that of a memorandum or note of reference to the law contained in the Statute. No doubt the former express reference to the Act is omitted, but the words of the Act are exactly followed, with the single exception that the words "at all times of their ministration" are inserted after the words "ministers thereof." It is to be observed that these words make no distinction, such as appeared in the rubrics of 1552 and 1559, between the communion service and other services, thereby seeming to suggest that thenceforth there was to be no difference between the vesture to be worn at the various ministrations.[1] The change is not noticed in the list of alterations in the copy of the Prayer Book in the library of the House of Lords, which shews the alterations other than merely verbal made by the Convocations; and this proves that it was not intended to make the material change of reintroducing the obsolete vestments.[2] If 1 Eliz. c. 2, s. 25, was repealed by the

[1] Their Lordships here again adduce the supposed authority of Baxter on this point. See p. 109, note, above.

[2] The fact mentioned seems, so far as it goes, to point rather in the opposite direction, for it was the statutory enactment and not the rubric which was taken as the basis, and there can be no question that the Statute of 1559, by recalling the vestments of 1549, intended a difference between the Communion and other services. If therefore the judgment is correct in holding that no material alteration was intended by the insertion of the words "at all times of their ministration," the result seems to be that the distinction between the services is continued. No doubt on the supposition that the revisers were tacitly treating the Act as

rubric, it must have been so repealed by implication, the two being inconsistent and irreconcileable. We see however nothing inconsistent between them. They can be read together as meaning that the general standard of ornaments was to be that of 1549, but that this standard was set up under a law, still unrepealed, which engrafted on the standard a qualification that as to the vesture of parish ministers the surplice, and not the alb, vestment, or tunicle, should be used. It is indubitable that for near two centuries succeeding 1662 the public and official acts of the Bishops and clergy, and of all other persons, were inconsistent with the supposition that the rubric of 1662 had made any change in the law. The Visitation Articles in the twenty-five years following that year shew that the Bishops understood the law to be that the surplice was always to be used by the clergy in administering the holy communion. Bishop Sparrow, who was one of the Commissioners at the Savoy Conference, wrote as follows in 1672: "The minister in the time of his ministration shall use such ornaments as were in use in the 2 Edw. 6, Rubr. 2, viz., a surplice in the ordinary ministration, and a cope in time of ministration of the holy communion in cathedral and collegiate churches: Qu. Eliz. Artic. set forth the seventh year of her reign."[1] And ever since the practice—consistent with the old law, inconsistent with the appellant's argument—has been uniform, open, continuous, and under authoritative sanction. What then in a question of this nature is the weight in law of such contemporaneous and continual

modified by the Advertisements, though they abstained from all mention of such modification, this inference would be got rid of.

[1] Rationale upon the Book of Common Prayer, p. 335, ed. 1672.

usage? We answer by quoting the words of Lord Campbell:[1] "Were the language . . . . obscure instead of being clear, we should not be justified in differing from the construction put upon it by contemporaneous and long-continued usage. There would be no safety for property or liberty, if it could successfully be contended that all lawyers and statesmen have been mistaken for centuries as to the true meaning of an old Act of Parliament:"[2] or of Chief Baron Pollock:[3] "The rule 'contemporanea expositio est optima et fortissima in lege' amounts to no more than this, that if the Act be susceptible of the interpretation which has been put upon it by long usage, the Courts will not disturb that construction:" or of Dr. Lushington in *Westerton* v. *Liddell*:[4] "Usage for a long series of years, in ecclesiastical customs especially, is entitled to the greatest respect; it has every presumption in its favour; but it cannot contravene or prevail against positive law, though, where doubt exists, it might turn the balance."[5] The Prayer Book of 1549 contains no direction as to

[1] *Gorham* v. *Bishop of Exeter*, 15 Queen's Bench Reports, at p. 73.

[2] It seems strange to quote a dictum recommending the unanimous opinion of lawyers and statesmen as a safe guide to the construction of old statutes in support of a construction of documents of ecclesiastical law which Burn, Gibson, and Stephens have expressly disapproved.

[3] *Pochin* v. *Duncombe*, 1 Hurlst. & Norm. at p. 856.

[4] Moore's Report, at p. 79.

[5] As to this question of "contemporanea expositio," it may be remarked: (1) that such exposition can only be resorted to when the language of the enactment is ambiguous; (2) that it may be doubted whether the principle has ever before been used to impose for the first time penalties upon those who have followed the apparent meaning of an ancient statute, in the absence of any judicial decision upon it, and when the balance of authority of commentators upon it is in favour of the construction contended for by the persons accused.

the use of the surplice or any other vesture in the marriage service, in the churching of women, in the Litany, and in some other services. These omissions are supplied by the Advertisements. The words therefore in the present rubric "at all times of their ministration," which are inaccurate if applied to the Book of 1549, are justified when applied to that book as read together with the Act of Elizabeth and the Advertisements.[1] The appellant's counsel relied on some opinions expressed by writers of the seventeenth and eighteenth centuries not having any legal authority. Such private opinions are not admissible to control the legal interpretation of public documents, or the legal inferences from public acts or usage. Cosin's notes, which were strongly pressed upon us, are not consistent with one another, and are inconsistent with his Visitation Articles and other public acts. Gibson followed Cosin, and Burn followed Gibson.[2] The view of Bennett[3] is in favour of this our judgment, for he gives

[1] The authors of the rubric of 1559 do not appear to have been troubled by this difficulty. The rubric at the end of the Book of 1549 seems expressly to leave the use of the surplice optional at the services not specially mentioned therein: see Burn, Eccl. Law quoted above, p. 97, note.

[2] The passage of Gibson referred to is Codex, p. 297, note to 1 Eliz. c. 2, s. 25: "Which *other* order (at least in the method prescribed by this Act) was never yet made: and therefore, *legally*, the ornaments of ministers in performing divine service are the same now as they were in 2 E. 6."

[3] The reference is to A Paraphrase with Annotations upon the Book of Common Prayer, by Thomas Bennett; see pp. 2–7. In an earlier passage of the judgment (Law Rep. 2 Prob. Div. p. 333) their Lordships say, "The second edition of this book was published in 1709, and the earlier edition (the date of which their Lordships have not observed) must have been still nearer the year 1662." The first edition was published in 1708, a fact discoverable without very elaborate research inasmuch as the dated preface is reprinted at the beginning of the second edition.

it as his opinion that it is plain that parish priests are obliged to use no other ornaments but surplices and hoods, the Advertisements and Canons being authentic limitations of the rubric; and he refers to the "practice which our governors do openly and constantly permit and approve" as a safe guide to the interpretation of laws. In *Liddell* v. *Westerton* the rubric was considered solely with reference to the ornaments of the church, and no question as to exercise of the power reserved by 1 Eliz. c. 2, s. 25, could be raised with regard to those ornaments. Words were used generally no doubt as to the construction of the rubric, but they must be limited to the subject with which the Court was there dealing. So the words of the Privy Council which have been so much relied on by the appellant were solely directed to the verbal exposition of the rubric itself. The same considerations apply to *Martin* v. *Mackonochie*. We think therefore that Lord Penzance was correct in following the decision in *Hebbert* v. *Purchas*.

In a later part of their judgment (which will be more particularly noticed hereafter) their Lordships, in dealing with the question of the position of the priest during the prayer of consecration, lay stress upon the fact that the case might assume the character of a penal charge, and they proceed:[1] "It is therefore necessary to be well assured . . . . that there is a direction *free from ambiguity* that the priest should stand," &c. In the result, they held that there was no such direction, and that it was lawful to adopt either of two positions.

It will have been observed that one of the principal

[1] P. 342.

grounds on which the decision in *Hebbert* v. *Purchas* was rested, namely, the use of the word "retained," was abandoned by the Judicial Committee in *Ridsdale* v. *Clifton.*

This decision can only be supported by the establishment of the following propositions: (1) that the Advertisements were in fact issued under the power reserved by 1 Eliz. c. 2, s. 25—a doubtful and difficult point of historical controversy; (2) that those Advertisements forbade the use of the vestments of 1549 (other than those which they themselves enjoined) under heavy penalties, without a word of prohibition, or even mention; (3) that in 1662 those who drew up the Prayer Book, and those who authorized its annexation to the Act of Uniformity, having the former rubrics, Acts, Advertisements, and Canons before them, deliberately inserted or retained a direction perfectly unambiguous on its face, intending that it should be penal to obey what it apparently commanded because qualifications had been introduced into it by a document, then nearly a hundred years old, to which no reference was made, and of which probably not one in a thousand of the clergy had ever heard; (4) that this intention was expressed in a manner "free from ambiguity."

It is well known that the decision was not unanimous. There appear to have been three dissentients; Chief Baron Kelly, Sir Robert Phillimore, and (it is believed) Lord Justice Amphlett: see the Chief Baron's Letter to the Lord High Chancellor upon the Late Order in Council, 1878, p. 7.[1]

[1] I have ventured to indicate my own view of these judgments, because I think that when the writer of a book has been led to form

The law as at present authoritatively declared is, that the cope is to be worn in ministering the holy communion in cathedrals and collegiate churches, and the surplice in all other ministrations, and that all other vestments are illegal.

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an opinion on any of the matters with which he deals, the reader is entitled to an expression of it. I am however of course fully aware of the unimportance of my suggestions, in face of the very great authority of those who were responsible for the decisions. The apparent difficulties in regard to them have led intemperate partisans to hint, if not assert, that they were arrived at upon grounds other than judicial with which the tribunal had properly nothing to do. A reference to the names of the Lords of the Council who attended will dispose sufficiently of any such accusations

CHAPTER IV.

ADMINISTRATION OF THE HOLY COMMUNION.

A.—Posture and Position of the Priest.

The rubrics in the communion service prescribe with considerable minuteness the posture and position of the officiating priest. It will be convenient to set out in order those which deal with these matters.

The first is at the beginning of the service: "The table, at the communion time having a fair white linen cloth upon it, shall stand in the body of the church, or in the chancel, where morning and evening prayer are appointed to be said. And the priest standing at the north-side of the table shall say the Lord's Prayer, with the collect following, the people kneeling." Then, after the Lord's Prayer and the collect which follows it, the rubric directs: "Then shall the priest, turning to the people, rehearse distinctly all the ten Commandments." After the Commandments, the rubric is: "Then shall follow one of these two collects for the Queen, the priest standing as before, and saying—." Then follow the collect, epistle, and gospel, the creed, the notices (if any), and the sermon. "Then shall the priest return to the Lord's table, and begin the offertory." After the offertory, if there is a communion, the priest is to place so much bread and wine as he shall think sufficient on

the table. Then follow the Prayer for the Church Militant, the Exhortations, and the Confession. During the latter, the priest and people are to be "kneeling humbly upon their knees." "Then shall the priest (or the Bishop, being present) stand up, and turning himself to the people, pronounce" the Absolution. After the Comfortable Words, and the sentences which follow them, the rubric is, "Then shall the priest turn to the Lord's table and say, It is very meet, right, &c." "Then shall the priest, kneeling down at the Lord's table, say in the name of all them that shall receive the communion this prayer following," namely the Prayer of Humble Access. That prayer ended, the rubric follows: "When the priest, standing before the table, hath so ordered the bread and wine that he may with the more readiness and decency break the bread before the people, and take the cup into his hands, he shall say the Prayer of Consecration, as followeth." Then comes the prayer, with the marginal notes as to the manual acts to be done by the priest while he is saying it. After the prayer, the rubric is: "Then shall the minister first receive the communion in both kinds himself, and then proceed to deliver the same to the bishops, priests, and deacons, in like manner (if any be present), and after that to the people also in order, into their hands, all meekly kneeling." After the words to be said by the priest in delivering the elements to the communicants, there is this rubric: "When all have communicated, the minister shall return to the Lord's table, and reverently place upon it what remaineth of the consecrated elements, covering the same with a fair linen cloth."

It will be convenient first to consider the *posture* of

the priest. The questions as to this have been practically confined to the posture during the prayer of consecration.

In *Martin* v. *Mackonochie*[1] one of the charges against the defendant was that he knelt or prostrated himself before the consecrated elements during the prayer of consecration. He admitted that he had knelt before the Lord's table during that prayer, but denied that he had knelt or prostrated himself before the elements. It was charged that such kneeling and prostration were unlawful additions to, and variations from, the form and order prescribed.

Upon this charge Sir Robert Phillimore observed in substance as follows: There is no charge of adoration of the sacrament, and the evidence is very far from clear as to what was actually done. It is established that the defendant did kneel twice during the prayer of consecration, but not that he prostrated himself. I do not say that prostration is an illegal gesture of devotion. The rubric gives no precise direction that the celebrant should kneel at any time during the prayer, but I am very far from saying that it is not legally competent to him, as well as to the other priests, and to the congregation, to adopt this attitude of devotion. It cannot be contended that at some time or other he must not kneel during the celebration, although no directions as to his kneeling at all are given by the rubrics. Moreover if the defendant has erred, the error is not such as ought to subject him to a criminal prosecution, but should be referred to the Bishop's discretion.[2]

The learned Judge accordingly made no order as to this part of the case; and the matter went before the

[1] See above, p. 45.

[2] See above, p. 48.

Privy Council. Their Lordships reversed the judgment *pro tanto*, giving their reasons to the following effect: The result of the evidence is that the respondent began the prayer of consecration standing; that on reaching the words "the same night that he was betrayed," after elevating and replacing the paten, he knelt on his knees towards the table, inclining or prostrating his head towards the ground; that he then rose and resumed the prayer, and that he did the same after the consecration of the chalice. It might be suggested that this latter kneeling was after the end of the prayer, and had reference to the ensuing reception of the elements by the celebrant. We consider therefore only the kneeling in the middle of the prayer. The rubric clearly intends that the priest is to stand throughout the prayer: the words "standing before the table" apply to the whole sentence: the manual acts can only be done in the attitude of standing. The rubric has therefore been violated, and no distinction can be made between grave and trivial violations of the rubrics: all must be exactly obeyed. The posture of the celebrating minister is throughout carefully and minutely prescribed, and it is not immaterial to observe that the note at the end of the Prayer Book of 1549 as to optional gestures of devotion[1] has been omitted in the later books. The argument that the celebrant is not directed to kneel while himself receiving is unfounded, for the words "all meekly kneeling" apply to him as well as to the congregation, and this is made more clear by the note at the end of the service, which begins, "Whereas it is

[1] "As touching kneeling, crossing, holding up of hands, knocking upon the breast, and other gestures: they may be used or left as every man's devotion serveth without blame."

ordained in this office for the administration of the Lord's Supper that the communicants should receive the same kneeling." The motive of the kneeling is immaterial. The charge involves what is expressly either ordered or prohibited by the rubric, and therefore is not such as could properly be referred to the Bishop's discretion. The respondent must be admonished to abstain from kneeling or prostrating himself before the consecrated elements during the prayer of consecration.

On two later occasions proceedings were taken before the Privy Council against Mr. Mackonochie to enforce obedience to this monition. They throw some light on the exact nature of the practices held to be unlawful. The first occasion was on the 2nd of December, 1869.[1] Mr. Mackonochie admitted that it was his practice reverently to bend one knee at certain parts of the prayer of consecration, and that occasionally when he did so his knee momentarily touched the ground, but he stated that such touching of the ground was no part of the act of reverence intended by him. Their Lordships were of opinion that this was a failure to comply either in the spirit or in the letter with the monition not to kneel or prostrate himself before the consecrated elements during the prayer of consecration.

The question was again raised on the 16th of November, 1870.[2] It was then again complained that Mr. Mackonochie had disregarded the monition which forbade him to prostrate himself before the consecrated elements. It appeared that he was in the habit of bowing down towards the table after placing the bread upon it, and remaining some seconds in that position,

[1] Law Rep. 3 Privy Council Cases, p. 52.
[2] *Ib.* p. 409.

and using the same gesture with respect to the cup. He stated that on some occasions his forehead might have touched the table, but that was no part of the act of bowing, his object being merely a low bow. Their Lordships said they did not regard a reverential bow as an act of prostration, but that the posture assumed and maintained for some seconds by Mr. Mackonochie was certainly not a mere bow, but a humble prostration of the body in reverence and adoration. They declared accordingly that he had not complied with the monition in that regard.

The decision in *Martin* v. *Mackonochie* was acted on by Sir Robert Phillimore in *Elphinstone* v. *Purchas*,[1] and in *Clifton* v. *Ridsdale* the illegality of kneeling during the prayer of consecration was expressly admitted by the defendant.[2]

Position of the Priest.

The position of the priest has been discussed with reference to two parts of the communion service, namely that part which precedes the prayer of consecration, and the prayer of consecration itself. The position which has been objected to is that generally known as the "eastward position," in which the priest stands at the west side of the holy table, and looks towards the east with his back to the congregation.

First, as to the earlier part of the service. In *Elphinstone* v. *Purchas*[3] it was charged that the priest

[1] See Law Rep. 3 Adm. & Ecc. 99, 100.
[2] See Law Rep. 1 Prob. Div. 319.
[3] See above, p. 92.

had read the collects next before the epistle standing in front of the middle of the holy table, with his back to the people. Sir Robert Phillimore as to this said, after quoting the rubric:[1] "I am aware that learned persons hold that these words, 'on the north side,' mean 'the north side of the table's front,' and possibly they do so; but, in the absence of any argument before me to this effect, I think I must take the *prima facie* meaning of the rubric, and consider it as the north side of the whole table; and upon this ground I must decide against Mr. Purchas upon this article."

In *Read* v. *Bishop of Lincoln*[2] it was charged that the Bishop had stood during the whole of the communion service, down to the ordering of the elements before the prayer of consecration, on the west side of the holy table, and not on the north side thereof. The Bishop pleaded that he had stood or knelt as required by the rubrics in front of the holy table, and at the northern part thereof, that being the north side of the table as directed by the rubric.

On this charge, the Archbishop of Canterbury gave judgment to the following effect: This is the first time that this question has been argued, though Sir Robert Phillimore gave his *prima facie* impressions on it in *Elphinstone* v. *Purchas*. The matter is one for historical inquiry, and cannot be decided upon a mere reading of the rubrics in the present Prayer Book. In the First Book of Edward VI. the rubric directed that the priest should begin the service "standing humbly afore the midst of the altar."[3] The principal altar was then set

[1] Law Rep. 3 Adm. & Ecc. 110.
[2] See above, p. 55.
[3] See above, p. 2.

against the east end of the chancel with its longer measure from north to south, and the rubric continued usage until then practically universal. In the interval between the promulgation of the two books of Edward VI. altars were to a great extent taken away, and moveable tables substituted for them.[1] These tables seem to have been made longer than the altars had been. The tables being moved down into the chancel, doubts and diversities arose as to the proper position of the officiating minister. These were clearly resolved by the directions in the Book of 1552, in which the rubric as to the position of the priest was, with a few unimportant verbal differences, the same as in the present Prayer Book.[2] From that time (excepting of course Mary's reign) down to about 1620, the common position of the table was lengthwise with its ends east and west: it was moved down into the body of the church when the holy sacrament was to be administered. In cathedrals and colleges the table appears to have been usually placed "altarwise," with its ends north and south. About 1620 an inclination gained ground not to move the tables about, and generally to treat them more reverently. The Ordinaries (who were decided by the Privy Council in 1633 to have full power in the matter) seem generally to have caused the tables to be placed altarwise at the east end of the churches. This revived the difficulty as to the proper mode of obeying the rubric.

[1] See above, pp. 2, *sqq.*

[2] Its exact terms were as follows: "The table having at the communion time a fair white linen cloth upon it, shall stand in the body of the church or in the chancel where morning prayer and evening prayer be appointed to be said. And the priest standing at the north side of the table shall say the Lord's Prayer with this collect following."

The Puritans maintained that with the altarwise position of the table there was no north side, but only a north end, and they contended that the altarwise position was therefore illegal as involving a violation of the rubric. The high churchmen on the other hand alleged that they complied with the rubric by placing themselves at the north end.[1] The fact is that the removal of the table to the east end was a departure from the original purpose and spirit of the rubric, and this position at the north end was a mode of complying with its letter. It appears that some of the clergy (among others Bishop Wren and Dean Cosin) officiated at the west side of the table, with their backs to the people, during the prayer of consecration. It is to be observed that this could only be justified (if at all) by the rubric at the beginning of the communion service, there being at that period no rubric authorizing a change of position at the prayer of consecration. Some also appear to have adopted the eastward position (commonly perhaps at the north part of the west side of the table) throughout the communion service. At the Savoy Conference the Puritans urged that the minister should turn to the people during the communion service: the Bishops advocated the eastward position. These opinions being irreconcileable, the rubric was left unaltered. How was the retained rubric worked and understood after 1662? The requirement of the north side or end, which was usual in the Articles and Injunctions issued by Bishops and Archdeacons in the reign of Charles I., ceased after 1662,

[1] It may be noticed, as shewing how little weight can be attached to this supposed distinction between side and end, that the Privy Council in *Liddell* v. *Westerton* incidentally allude to the east side of the holy table as the "end nearest the wall": Moore's Rep. p. 151.

and never reappears. The north end became the generally used position, and is beyond question a true liturgical use in the Church of England. The result of the evidence of pictorial representations, many of them occurring in books edited or written by Bishops and leading divines, is that the position looking eastward, and commonly while standing at the northern part of the table, cannot in the century following 1662 justly be called exceptional. The contention of the defendant that the north part of the west side is the "north side" intended by the rubric, is contradicted by the rubric's history. On the other hand, there is no ground for the suggestion that the eastward position imports a sacrificial doctrine of the eucharist. The conclusion to which the Court comes, is that the rubric was originally plain and definite, that when about eighty years after its publication the tables were moved to the east end, the rubric became in its original sense incapable of literal fulfilment, and that a certain liberty in the selection of a mode of complying with it existed. That liberty (though for a long time it was less and less exercised) can only be taken away by legislation: the Court cannot declare under penal consequences that what has never been set forth as the only possible form of obedience to the rubric under present conditions is alone admissible. The charge must be dismissed.[1]

[1] It is submitted however that the present rubric must be considered as enacted *de novo* in 1662, and that the judgment in this case attaches no meaning whatever to the words "north side" as used therein. The very fact that controversies and doubts had arisen as to the position of the priest is a strong argument to shew that the rubric was allowed to stand, not carelessly or by inadvertence, but deliberately, and in view of the discussions which had taken place; and that the revisers had satisfied themselves, before leaving the words as they found them, that they were capable of fulfilment, when (as was usual at the time) the holy table was placed altarwise, by officiating at the north side of it.

This was one of the matters which were made the subject of the appeal to the Privy Council. Their Lordships' judgment on it was to the following effect: There is nothing in the rubric which touches matters of doctrine, and it is difficult to understand the importance which has been attributed to this question. If any special doctrine as to the nature of the sacrament were signified by the eastward position, it would be much more emphatically presented by a change in the position of the priest at the prayer of consecration, at which prayer it is admitted that the eastward position is lawful. Even if it were true that the priest must stand at the north side of the table, there would be nothing to compel him to turn to the south rather than to the east while so standing. The controversy as to the position of the priest was still being carried on when the present Prayer Book came into force, but the rubric was left unaltered,[1] and no attempt was made to solve the difficulty. There have been dicta, but no binding decision, of the Privy Council on this point. We think that even assuming that what would be more commonly spoken of as "ends," may properly be called "sides," yet where a position at the north side was enjoined by the rubric, one of the longer sides of the table was in contemplation, and it was also in contemplation that all the acts prescribed which were to be done at the table should be done at that side. Considering the terms of the rubric, and the circumstances existing when it was framed, we cannot regard it as so definitely and unequivocally enjoining that the priest shall, no matter how the table may be placed, stand at that end of the table which faces the north when

[1] See however p. 125, note, above. The alterations were verbal, but they shew at any rate that the rubric was minutely considered.

saying the opening prayers, that no other position can be assumed without the commission of an ecclesiastical offence. We indicate no opinion that it would be illegal to stand at the north end when saying the opening prayers, but we determine that it is not an ecclesiastical offence to stand at the northern part of the side which faces westwards.

Position during the Prayer of Consecration.

In *Elphinstone* v. *Purchas*[1] it was charged against the defendant that during the whole of the prayer of consecration he had stood at the middle of the west side of the holy table, between the people and the table, with his back to the people, so that they could not see him break the bread or take the cup into his hand.

Sir Robert Phillimore expressed himself as to this charge in substance as follows: The rubric does not require that the people should see these acts, and if it did, the evidence shews that in this case they could see them. The question is settled by *Martin* v. *Mackonochie*,[2] for there the Privy Council expressly lay down that the words "standing before the table" in the rubric apply to the whole sentence. I dismiss the charge.[3]

On this point the Privy Council on appeal gave

[1] See above, p. 92.
[2] See above, p. 121.
[3] Sir Robert Phillimore in the same case decided that it was plainly contrary to the rubrics to say the collects following the creed at evening prayer at the foot of the altar steps turning eastward, and a violation of the spirit of the Prayer Book to read the epistle facing eastward.

judgment to the following effect:[1] The rubric means that the priest is so to stand that those present may see him break the bread and take the cup into his hand. We find in this case on the evidence that the greater part of the congregation could not see the defendant do these things. Passing to the main subject, three questions present themselves: (1) What is meant by "the north side of the table?" (2) What change (if any) is ordered by the rubric before the prayer of consecration? (3) What is the meaning of "before the people" in that rubric? We think that "north side" means that side which looks towards the north. When the tables were moved to an altarwise position at the east end, the proper position was (as appears from many authorities) at the north side or end, facing south. The words "before the people" mean that the people are to see what is done. The respondent disobeyed the rubric by preventing the people from seeing the breaking of the bread. As to the question whether the rubric directs a change of position at the prayer of consecration, we incline to think that it is intended to set the minister free for the moment from the general direction to stand at the north side, for the special purpose of ordering the elements: whether for that purpose he would have to change from one side of the table to another, would depend on the position of the table, and the position thereon of the elements. In *Martin* v. *Mackonochie* the question before the Committee was as to posture, not position. We think on the whole that the prayer of consecration is to be used at the north side of the

[1] It will be observed that the Judical Committee incidentally dealt with the position of the priest during the earlier part of the service. The same remark applies to *Ridsdale* v. *Clifton, post.*

table, so that the minister looks south; and a monition will issue against the respondent in respect of this charge.

In *Clifton* v. *Ridsdale* [1] the accusation was that the defendant stood during the prayer of consecration at the middle of the west side of the holy table, between the people and the table, with his back to the people, so that they could not see him break the bread or take the cup into his hand. No defence was offered as to this before Lord Penzance, it being admitted that he was bound by the decision in *Hebbert* v. *Purchas*, but it was one of the matters on which Mr. Ridsdale appealed to the Privy Council. Their Lordships' judgment on it was to the following effect: We cannot accept the contention that the altarwise position of the holy table at the east end of the church is illegal, though there is no doubt that the table may legally be moved. The practice of moving had become very infrequent in 1662, when the present rubric before the prayer of consecration was first introduced, and there are now few churches where the holy table could be moved conveniently without structural rearrangement. The rubrics assume that before the prayer of consecration the communicants will have been concentrated round the holy table. During those parts of the communion service in which the priest is directed expressly or by implication to stand at the north side of the table, we have no hesitation in saying that he is to stand at the side next the north, whether it be a longer or shorter side of the table. It is quite accurate to speak of the four sides of an oblong table. If it were necessary to extract from the rubrics a rule governing the position of the minister throughout the communion

[1] See above, p. 73.

office, where no contrary direction is expressed or necessarily implied, the rule could not be other than that laid down in *Hebbert* v. *Purchas*, and to obey that rule by standing at the north side of the table and looking south is not only lawful, but would ordinarily enable the minister with the greatest certainty and convenience to fulfil the requirements of all the rubrics. But this case may assume a penal character, and we must therefore, before deciding adversely to the appellant, see that there is a direction free from ambiguity as to the position to be assumed. The breaking of the bread was first introduced among the manual acts at the revision of 1662. The words "before the people," coupled with the direction as to the manual acts, are meant to be equivalent to "in the sight of the people." The direction that the priest is to order the elements "standing before the table" authorizes, though it does not oblige, him to order them standing on the west side looking east. There is no specific direction that during the prayer he is to stand on the west or on the north side, but he must so stand that he may in good faith enable the communicants present, or the bulk of them, being properly placed, to see, if they wish it, the performance of the manual acts. We are not prepared to hold that a penal charge is established merely by proof that the appellant stood while saying the prayer of consecration at the west side of the communion table, without further evidence that the people could not see him break the bread or take the cup into his hand.

In *Read* v. *Bishop of Lincoln*[1] it was taken as settled by *Ridsdale* v. *Clifton* that the mere fact of standing eastward on the west side of the holy table during the

[1] See above, p. 55.

prayer of consecration was not illegal. It was however charged against the Bishop that he stood in that position "in such wise that the communicants present, being then conveniently placed for receiving the holy sacrament, could not, when he broke the bread and took the cup into his hands, see him break the bread and take the cup into his hands according to the directions contained in the rubric immediately before the prayer of consecration." The Bishop's responsive plea was that "whilst reading the prayer of consecration he stood, with his face to the east, between the people and the holy table, and before the people, but he had no wish or intention to prevent the communicants present from seeing him break the bread and take the cup into his hand."

The Archbishop's judgment on this charge was in substance as follows: Does the Prayer Book require that the manual acts should be visible? The words "before the people" in the rubric are only actually applied to one of the five manual acts prescribed, namely the breaking of the bread. At the Savoy Conference the Puritans urged, and all agreed, that the manner of consecrating should be more explicitly and distinctly described, and especial stress was laid on a demand that the bread should be broken during the service and not before. The words "before the people" probably have reference to this latter demand, and do not necessarily mean only that the people must have the breaking before their eyes. But we do not doubt that on wider considerations the priest is bound to take care that the manual acts shall not by his position be rendered invisible to the bulk of the communicants. When the rubric was framed, the acts were undoubtedly visible; and the openness of the ceremonial at the communion is an

essential part of the use of the Church of England. We further hold that in the mind of the minister there ought to be a wish and intention not to hide the acts, not merely no wish or intention to hide them; he must not be so indifferent as to the result of what he does as to do that which is certain to make them invisible. We hold that the Bishop in his plea has mistaken the true interpretation of the order of the holy communion in this particular.

This matter was not discussed before the Privy Council.

The law as to the position of the priest at the communion as at present declared may be thus stated: It is lawful to say all the prayers in the communion service either at the north side of the holy table, or at the west side facing eastward. If the priest stands in the latter position while saying the prayer of consecration, he must take care that the manual acts prescribed by the Prayer Book are visible to the communicants or the bulk of them.

B.—The Bread.

The rubric in the First Book of Edward VI. as to the bread to be used in the holy communion was as follows: "For avoiding of all matters and occasions of dissension it is meet that the bread prepared for the communion be made through all this realm after one sort and fashion: that is to say, unleavened and round as it was afore, but without all manner of print, and something more larger and thicker than it was, so that it may be easily divided in divers pieces: and every one shall be divided in two pieces at the least or more by the

discretion of the minister, and so distributed. And men must not think less to be received in parts than in the whole, but in each of them the whole body of our Saviour Jesus Christ."

In the Second Book this rubric was substituted: "And to take away the superstition which any person hath or might have in the bread and wine, it shall suffice that the bread be such as is usual to be eaten at the table with other meats, but the best and purest wheat bread that conveniently may be gotten. And if any of the bread or wine remain, the curate shall have it to his own use."

The latter rubric was reprinted in 1559, but the Injunctions of the Queen issued in that year contain the following:[1] "Where also it was in the time of King Edward the Sixth used to have the sacramental bread of common fine bread, it is ordered for the more reverence to be given to these holy mysteries, being the sacraments of the body and blood of our Saviour Jesus Christ, that the same sacramental bread be made and formed plain, without any figure thereupon, of the same fineness and fashion round, though somewhat bigger in compass and thickness, as the usual bread and wafer (*al.* water), heretofore named singing cakes, which served for the use of the private mass."

The 20th of the Canons of 1603 directs as follows: "The churchwardens of every parish against the time of every communion shall at the charge of the parish with the advice and direction of the minister provide a sufficient quantity of fine white bread and of good and wholesome wine for the number of communicants that shall from time to time receive them."

[1] 1 Card. Doc. Ann. 234.

The present rubric, as settled at the revision of 1662, is as follows: "And to take away all occasion of dissension and superstition which any person hath or might have concerning the bread and wine, it shall suffice that the bread be such as is usual to be eaten, but the best and purest wheat bread that conveniently may be gotten."

In *Elphinstone* v. *Purchas*[1] it was one of the charges against the defendant that he had in the administration of the holy communion used wafer-bread (being bread made in the special shape and fashion of circular wafers) instead of bread such as is usual to be eaten, and had administered the same to the communicants, that is to say, one such wafer to each of them.

Sir Robert Phillimore's judgment on this charge was to the following effect: There is no evidence that the wafer was not broken, and the only question for my decision therefore is whether wafer-bread, that is bread in the shape of a wafer, may lawfully be administered. The present rubric varies from that of 1552 only by the substitution of "all occasion of dissension and superstition" for "the superstition." It appears that while the rubric of 1549 prescribed a uniformity of size and material, the later rubrics are contented with the order that the purest wheaten flour shall suffice, and the bread may be leavened according to the use of the Eastern, or unleavened according to the use of the Western Church. The Injunctions of Elizabeth afford a *contemporanea expositio* to this effect. So a letter of Archbishop Parker to Sir W. Cecil, in 1570,[2] contains

[1] See above, p. 92.

[2] Parker's Corresp., published by the Parker Society, Camb. 1853, p. 376.

these passages: "Her highness talked with me once or twice on that point" (i.e. the sacramental bread) "and signified that there was one proviso [1] in the Act of the Uniformity of Common Prayer that by law is granted unto her, that if there be any contempt or irreverence used in the ceremonies or rites of the Church, by the misusing of the orders appointed in the book, the Queen's Majesty may, by the advice of her Commissioners or Metropolitan, ordain and publish such further ceremonies or rites as may be most for the reverence of Christ's holy mysteries and sacraments, and but for which law her highness would not have agreed to divers orders of the book; and by virtue of which law she published further order in her injunctions both for the communion bread, and for the placing of the tables within the quire. They that like not the injunctions force much the statute in the book. I tell them that they do evil to make odious comparison betwixt statute and injunction, and yet I say and hold that the injunction hath authority by proviso of the statute. . . . 'It shall suffice' I expound, when either there wanteth such fine usual bread, or superstition be feared in the wafer-bread, they may have the communion in fine usual bread; which is rather a toleration in these two necessities, than is in plain ordering, as is in the injunction." This is a weighty authority, especially as it proceeds on the principle which was adopted in *Liddell* v. *Westerton* as to the covering of the holy table.[2] We know, on the authority of Bishop Cosin, that wafer-bread was used down to the year 1643.[3]

[1] 1 Eliz. c. 2, s. 26. [2] See above, p. 14.

[3] The passage referred to is in the third series of Cosin's Notes on the Prayer Book, and will be found in the fifth volume of the

No offence against ecclesiastical law has been established in this matter.

On appeal to the Privy Council their Lordships pronounced judgment to the following effect: The Elizabethan Injunction is at variance with the Elizabethan rubric: it cannot be called an "*expositio*" of it. We cannot think that an option was intended to be left by either of the rubrics of Edward VI., or by the Injunction of Elizabeth. The second rubric of Edward is not peremptory in form, but it produced uniformity and not diversity, as is testified by the Injunction. The words "it shall suffice" are in themselves ambiguous, and may amount either to a permission, or to a positive direction; but the statement that the rubric is intended to take away all occasion of dissension and superstition seems to shew that here there is a positive direction for uniformity in the use of common bread. When Cosin and others in 1662 desired to insert words making the wafer also lawful, they were rejected.[1] The Visitation Articles from the time of Charles II. shew that wheat bread only was to be provided for the sacrament; and such bread was exclusively used till about 1840. The 20th Canon supports this opinion. On the whole we think that the

Oxford edition of his works (1855), at p. 481. It is as follows: "It is not here" (i.e. in the rubric as it stood before the last revision) "commanded that no unleavened or wafer-bread be used, but it is said only 'that the other bread shall suffice.' So that though there was no necessity, yet there was a liberty still reserved of using wafer-bread, which was continued in divers churches of the kingdom, and Westminster for one, till the 17th of King Charles."

[1] The words proposed seem to have been "though wafer-bread, pure and without any figure upon it, shall not be forbidden." See Card. Conf. p. 392, note; and see the preface to vol. v. of the Oxford edition of Cosin's Works (1855) p. xxi. *sqq.*

law of the Church has directed the use of pure wheat bread.

In the second suit, *Martin* v. *Mackonochie*,[1] the use of wafer-bread was one of the matters complained of. Sir Robert Phillimore gave it as his opinion that it was competent to him to hear argument in favour of the lawfulness of such use in spite of the decision in *Hebbert* v. *Purchas*, "because I think it probable that if their Lordships had not been deprived of the usual assistance of counsel, they would have arrived at a different conclusion." He, however, as explained at the page already cited, thought it better that the parties should discuss the matter on appeal before the Privy Council, and he therefore declined to hear the argument tendered.

In *Clifton* v. *Ridsdale*[2] the charge of using wafer-bread was not resisted before Lord Penzance, it being admitted that his Lordship was bound by the decision in *Hebbert* v. *Purchas*. On appeal to the Privy Council, it was decided that the language of the pleading did not raise the question of the composition of the bread, but merely that of its shape; and it was held that there was nothing illegal in the use of common bread of such shape and thinness as to be called a wafer. The judgment proceeded to the following effect: As however the question of the construction of the rubric has been raised, we think it right to express our opinion on it. We have no doubt that what is usually called a wafer, namely, a composition of flour and water rolled very thin and unleavened, is not "bread such as is usual to be eaten," or "the best and purest wheat bread that may conveniently be gotten." The only question is

[1] See above, p. 104.

[2] See above, p. 73.

that raised on the words "it shall suffice." In many cases these words would be quite consistent with something different from what is mentioned being supplied, but here the words "to take away all occasion of dissension and superstition" make it necessary that that which is to take away such occasion should be definite, exact, and different from what had caused the dissension and superstition. The rubric which directs that "the bread and wine for the communion shall be provided by the curate and the churchwardens at the charges of the parish" seems to contemplate ordinary bread; and the 20th Canon is still more precise in the same direction. The Injunction of Elizabeth regulates not the substance, but the form of the bread, and when so regarded, is not at variance with the rubric in force at the time. There is no doubt that there was diversity of practice throughout the reign of Elizabeth. After 1603 the Visitation Articles usually mention "fine white bread," and this went on after 1662. The universal practice since that time down to 1840, or later, was to use fine wheat bread, such as is usual to be eaten. We think that if it had been averred and proved that the wafer properly so called had been used by the appellant, it would have been illegal.

It is accordingly settled as law that pure wheat bread, such as is usually eaten, is the only substance which can legally be used as bread in the holy eucharist.

C.—The Mixed Chalice.

The Prayer Book of 1549 contains this rubric: "Then shall the minister take so much bread and wine as

shall suffice for the persons appointed to receive the holy communion, laying the bread upon the corporas, or else in the paten, or in some other comely thing prepared for that purpose; and putting the wine into the chalice, or else in some fair or convenient cup prepared for that use (if the chalice will not serve), putting thereto a little pure and clean water, and setting both the bread and wine upon the altar."

This rubric was wholly omitted in the Book of 1552.

In the present book the rubric immediately preceding the prayer for the church militant is as follows: "And when there is a communion, the priest shall then place upon the table so much bread and wine as he shall think sufficient."

At the end of the service there is this rubric: "And if any of the bread and wine remain unconsecrated, the curate shall have it to his own use."

In *Martin* v. *Mackonochie* [1] it was charged against the defendant, and admitted by him, that he had, during the celebration of the holy communion, mixed water with the wine, and sanctioned such mixing and the administration of the wine and water so mixed to the communicants. It was alleged that such mixing and administration were an unlawful addition to, and variation from, the prescribed form and order. Sir Robert Phillimore gave judgment on this matter to the following effect: From a very early period, before the division of the Church, it was customary to mix a little water with the sacramental wine. There is nothing superstitious about such mixing. It prevailed in the Church of England before the Reformation. The rubric of 1549 shews that the mixture of wine and water was

[1] See above, p. 45.

properly described as "wine." In all later Prayer Books, however, the mention of water is omitted, and, though this omission may not be significant in the Book of 1552, in which no manual acts are prescribed, that cannot be said of the present Prayer Book, and I must regard this omission in it as equivalent to a prohibition of the ceremony or manual act of mixing water with the wine during the celebration. I do not say that it is illegal to administer wine with which a little water has been previously mixed.

In *Elphinstone* v. *Purchas* [1] the charge was that the defendant had administered wine mixed with water, instead of wine, to the communicants. Sir Robert Phillimore said (in substance): I see nothing illegal in this practice, which has the sanction of Bishop Andrewes, of Bishop Cosin, and of Mr. Palmer in his Origines Liturgicæ.

On appeal the Privy Council delivered their judgment to the following effect: Sir Robert Phillimore has not noticed that the authority of Bishop Andrewes is not for an administration of a cup previously mixed, but for a mixing during the service, an usage which is admitted to be illegal. We cannot agree that if the mixing and administering in the service is an additional ceremony, and therefore unlawful, it becomes lawful by removing from the service the act of mixing, and keeping and administering the mixed cup. So far as we know, there is no custom anywhere of mixing before and apart from the service. The direction that the curate is to have such of the wine as remains unconsecrated is inconsistent with a previous mixing of it with water. We do not think the question important, because it is unlikely that a

[1] See above, p. 92.

practice which has no sanction in the usage of any part of the Church will find favour. As, however, it has been raised, a monition must issue against the respondent.

In *Clifton* v. *Ridsdale*[1] mixing during the service and administration of the mixed cup were both charged. No resistance was made to these charges before Lord Penzance, nor did Mr. Ridsdale complain of the adverse judgment upon them in his appeal to the Privy Council.

In *Read* v. *Bishop of Lincoln*[2] both mixing, and administration of the mixed cup, were charged and admitted. As to the first, the Archbishop said that though it might not be proved that everything not ordered was prohibited, yet the express removal of the simple direction in the Prayer Book of 1549 to add a little water must undoubtedly be understood to mean that the mixing at that place was not to be continued; and added that in fact there were good liturgical reasons for the removal of the direction. As to the question of the legality of administering a cup previously mixed, the judgment was to the following effect: The consecration and administration of a mixed cup is, as the revisers of 1552 well knew, a primitive, continuous, and all but universal practice in the Church. Some new information has thrown fresh light on the question since *Hebbert* v. *Purchas* was decided. No symbolical meaning has been authoritatively attached to the practice, and it is impossible that unauthorized devout interpretations of it can make it illegal. It is not the fact that there was no usage in east or west of mixing apart from and before the service. There can be no doubt that in the Eastern and Greek Churches the custom was (except in Armenia) to mix the cup before the service; and we know that in

[1] See above, p. 73.

[2] See above, p. 55.

fact the Liturgy of S. Chrysostom, in which this practice appears, was used and studied by Cranmer, who took a principal part in the revision of 1552. It is now known that a similar usage was sanctioned by the ancient Western Liturgy called the Mozarabic, and that that liturgy also was well known to the revisers of 1552. They were seeking to re-establish primitive usage, to find which they went to the ancient liturgies, and it was in accordance with the highest and widest liturgical precedents that the ceremonial mixture during the service was omitted. With regard to the argument that the curate and churchwardens are only required to provide bread and wine, that rubric[1] simply regulates the mode in which the expenses of the service are to be met, and there could be no occasion to mention water. As to the argument based on the direction that the curate is to have whatever wine is not consecrated, the answer is that whatever was mixed would be presented and consecrated, and so consumed. There is nothing incorrect in describing a mixture of wine and water as wine, and it is so described in the rubric of 1549. Mixing before the service cannot be an addition to or variation from the service. If the previous mixing is not unlawful, neither can the administration of the cup so mixed be unlawful, for it differs nothing from the administration of unmixed wine. The Church of England, acting within her powers as set forth in the 34th Article of Religion,[2] abolished the ceremony of mixing, and that ceremony is illegal. No rule has

[1] See above, p. 140.

[2] "Every particular or national church hath authority to ordain, change, and abolish ceremonies or rites of the Church ordained only by man's authority, so that all things be done to edifying."

abolished the almost universal use of a mixed cup, though when it was thought desirable to modify the direction as to unleavened wafers, a rubric was inserted declaring wheat bread sufficient. The Court cannot make such a rubric, and we find no ground for pronouncing the use of a cup mixed beforehand an offence.

Before the Privy Council no question was raised as to the ceremonial mixing during the service. Their Lordships had therefore to consider only whether the administration of a cup previously mixed was unlawful. On this point the judgment was in substance as follows: Looking at the ordinary and natural meaning of words, and at the use of the word "wine" in the rubric of 1549, we cannot think that the mere use of that word in the present rubric prohibits by implication the presence of water in that which is consecrated and administered. We are unable to follow the judgment in *Hebbert* v. *Purchas* in holding that administration of a cup mixed before the service is an additional ceremony, for the acts of administration and consecration being precisely the same whether the cup be mixed or unmixed, no ceremonial act is added to the service by the previous mixing. We agree with the Archbishop that this use not being illegal on other grounds, cannot be made illegal by any symbolism which has been attached to it.

The law therefore as at present declared by authority is that the mixing of the wine in and as part of the service is against the law of the Church, but that the use of a cup mixed beforehand does not constitute an ecclesiastical offence.

D.—Elevation of the Sacrament.

In the Prayer Book of 1549, after the prayer of consecration, there is this rubric: "These words before rehearsed are to be said turning still to the altar, without any elevation or shewing the sacrament to the people."

The 28th Article of Religion contains these words: "The sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up, or worshipped."

In *Martin* v. *Mackonochie*[1] the defendant was charged with elevating the paten and cup above his head during the prayer of consecration. He admitted that he had done so, but alleged that he had discontinued the practice.

Sir Robert Phillimore's judgment on this charge was to the following effect: The elevation of the sacrament was first formally adopted into the Canon Law in 1217, and was expressly connected with the adoration of the host. In the Order of the Communion which was issued by authority in 1548, where it should be necessary to consecrate more wine, it was directed to be done "without any levation or lifting up." The 28th Article no doubt is declaratory and not mandatory, but looking to the spirit and letter of the Prayer Book and the Article, and considering the history of the Reformation, I think it clear that the restorers of the Church of England to primitive antiquity were of opinion that the elevation was so connected with the repudiated doctrine of transubstantiation, as distinguished from the real presence, that it ought not to be suffered to remain. I

[1] See above, p. 45.

hold that the practice complained of is unlawful, though it is clear that some elevation is contemplated by the rubrics which direct the priest to take the paten and cup into his hands.

The decision on this head being adverse to the defendant, it was not questioned in the appeal to the Privy Council.

In a later proceeding against Mr. Mackonochie[1] the Lords of the Council declared that they gave no sanction whatever to a notion that any elevation whatever of the elements, as distinguished from the mere act of removing them from the table, and taking them into the hands of the minister, is sanctioned by law.

In a further proceeding arising out of the same suit the Privy Council decided (and it was not disputed) that to raise the consecrated bread or wafer is equivalent to raising the paten.[2]

In *Elphinstone* v. *Purchas*,[3] and the second suit of *Martin* v. *Mackonochie*,[4] similar charges were made. In the latter case the charge was held not to be proved by the evidence adduced: in *Elphinstone* v. *Purchas*, Sir Robert Phillimore followed his judgment in the first suit of *Martin* v. *Mackonochie*, and admonished the defendant to abstain from the elevation complained of.

E.—Ablution.

The rubrics bearing upon this matter in the present Prayer Book are as follows:—

1. After the rubric prescribing what is to be done in

[1] Law Rep. 3 Privy Council Cases, p. 63; see p. 122, above.
[2] Law Rep. 3 Privy Council Cases, p. 417.
[3] See above, p. 92.
[4] See above, p. 104.

case the elements consecrated are found to be not enough, this follows: "When all have communicated, the minister shall return to the Lord's table, and reverently place upon it what remaineth of the consecrated elements, covering the same with a fair linen cloth."

2. At the end of the service there is this rubric: "And if any of the bread and wine remain unconsecrated, the curate shall have it to his own use; but if any remain of that which was consecrated, it shall not be carried out of the church, but the priest and such other of the communicants as he shall then call unto him shall, immediately after the blessing, reverently eat and drink the same."

In *Read* v. *Bishop of Lincoln* [1] one of the charges was that the respondent without any break or interval, and as connected with, and as forming part of the rites and ceremonies of the service, took part in the ceremony of ablution; that is to say, of pouring wine and water into the paten and chalice which had been used in the service, and then drinking up such wine and water in the face of the congregation; being a ceremony additional to those prescribed. It was proved that these acts were done after the benediction.

On this charge the judgment pronounced by the Archbishop was to the following effect: There is nothing objectionable in the use by a clergyman of what he may think the best way of consuming reverently all the elements so that nothing may be "carried out of the church." The term "ceremony of ablution" is not fairly applicable to what is described. That ceremony was well known before the Reformation. It took place before the administration of the sacrament to the people,

[1] See above, p. 55.

and consisted of several acts, accompanied by prayers, prescribed as an integral part of the service still in progress. This is totally different from the particular manner in which, after the service, the direction in the Prayer Book to consume what remains may be complied with. Exception nevertheless is taken to the time and place of the consumption. The service ends with the blessing, but it is complained that some of the communicants were still present when the ablution was performed. This is however exactly what is contemplated by the rubric, which provides for the calling of some of the communicants by the priest to help in the consumption if necessary. As to the place, that appears to have been the holy table, and though we think that the credence would have been the more correct place at which to consume what was left, there is no ecclesiastical offence in doing it at the holy table. We have no doubt that anything which could properly be described as a ceremony of ablution would be unlawful, but here nothing of the kind has been proved.

On appeal, the Privy Council dismissed this charge very shortly, observing that there was no reason to think that what was done was anything but what it was alleged to have been, namely, a reverent consumption of the remnants of the consecrated elements in accordance with the Prayer Book, or to regard it as an additional or unlawful ceremony.

F.—Number of Communicants.

At the end of the communion service in the present Prayer Book are the following rubrics:—

"And there shall be no celebration of the Lord's

Supper, except there be a convenient number to communicate with the priest, according to his discretion.

"And if there be not above twenty persons in the parish of discretion to receive the communion; yet there shall be no communion, except four (or three at the least) communicate with the priest."

In *Clifton* v. *Ridsdale*[1] it was charged that the respondent had celebrated the Lord's Supper when only one person communicated with him. By his answer he alleged that on the occasion in question there were present in the church a convenient number to communicate with the priest, and every opportunity was given to them and every of them to communicate with the priest.

Lord Penzance's judgment on this charge was in substance as follows: The rubric is express that there is to be no communion unless the required number are present and communicate: the question is not whether the priest knows or has means of knowing that there will be too few. It is urged on behalf of the respondent that he had no power to prevent the illegality, because the priest is directed to consecrate and receive the elements before he has any means of ascertaining the number of the communicants. The rubrics however assume that the number of those about to communicate will be, at least approximately, known to the priest; for example: "At the time of the celebration of the communion, the communicants being conveniently placed for the receiving of the holy sacrament," "Then shall the priest say to them that come to receive the holy communion," "Then shall this general confession be made in the name of all that are minded to receive

[1] See above, p. 73.

the holy communion." And those who intend to communicate are invited to signify their intention beforehand. In the First Book of Edward VI. there was an express direction after the offertory: "Then so many as shall be partakers of the holy communion shall tarry still in the quire, or in some convenient place nigh the quire, the men on the one side and the women on the other side. All others (that mind not to receive the said holy communion) shall depart out of the quire, except the minister and clerks." In the Second Book this was left out, but in the exhortation therein directed to be read when the people are negligent to come to the holy communion, the following passage occurs: "And whereas ye offend God so sore in refusing this holy banquet, I admonish, exhort, and beseech you that unto this unkindness ye will not add any more. Which thing ye shall do, if ye stand by as gazers and lookers on them that do communicate, and be no partakers of the same yourselves. For what thing can this be accounted else than a furthur contempt and unkindness unto God? . . . Wherefore, rather than ye should so, depart you hence, and give place to them that shall be godly disposed." This exhortation may have given rise to the general custom for non-communicants to withdraw. The language of the 25th Article of Religion, which speaks of the sacrament as not to be gazed upon,[1] throws some light on the matter. It appears then that all the Prayer Books contemplate that there would be some means of discriminating between those who intended and those who did not intend to receive the communion, but that in the Book of 1552 and in the

[1] "The sacraments were not ordained by Christ to be gazed upon, or to be carried about, but that we should duly use them."

present book no specific method of doing so is laid down. The withdrawal of the non-communicants is not enjoined, nor (so far as I know) are there any means at the minister's command to enforce it. I do not doubt however that the respondent's congregation would assist him in avoiding a celebration of the sacrament illegal by reason of an insufficient number of communicants; and he might perfectly well publicly request the communicants to separate themselves from the non-communicants, so that he may recognise them. In point of fact he has neither done nor attempted to do anything of the kind, nor am I satisfied by the evidence that he had reasonable ground to believe, or did believe, that there would be a sufficient number of communicants on the occasion in question. In my opinion, therefore, the rubric has been violated without excuse, and I admonish the respondent to obey it in future.

This point was not included in the appeal to the Privy Council.

G.—The Hymn "Agnus Dei."

In *Elphinstone* v. *Purchas*[1] one of the charges was that the defendant had caused to be said or sung, before the reception of the elements, and immediately after the prayer of consecration, the words, or hymn, or prayer, commonly known as the Agnus, that is to say, "O Lamb of God, that takest away the sins of the world, have mercy on us."

Sir Robert Phillimore held that this was an additional rite or ceremony, and consequently illegal on the principle of the decision in *Martin* v. *Mackonochie*.

[1] See above, p. 92.

In *Clifton* v. *Ridsdale*[1] there was a similar charge. It was not contested before Lord Penzance, nor was his adverse judgment on it appealed against.

In *Read* v. *Bishop of Lincoln*[2] the matter was more fully discussed. There the charge was that the Bishop had caused, or permitted to be said or sung, before the reception of the elements, and immediately after the reading of the prayer of consecration, the words, or hymn, or prayer, commonly known as the Agnus, that is to say, "O Lamb of God, that takest away the sins of the world, have mercy on us."

The judgment pronounced by the Archbishop was to the following effect: If this is illegal, it must be so because either (1) it is illegal to introduce any hymn or anthem not ordered by the rubric, or (2) it is illegal to do so in this particular place, or (3) something in the words themselves makes them so unsuitable that they are virtually illegal. The first of these grounds was not maintained in the argument. As to the second: the proviso in the first Act of Uniformity, which authorized the singing of words out of the Bible,[3] is not actually law,[4] and the only express sanction for hymns or anthems during the service is the rubric after the third

[1] See above, p. 73.

[2] See above, p. 55.

[3] 2 & 3 Edw. 6, c. 1, s. 7: "Provided also that it shall be lawful for all men, as well in churches, chapels, oratories, and other places, to use openly any psalms or prayer taken out of the Bible at any due time, not letting or omitting thereby the service or any part thereof mentioned in the said book," i.e., the Prayer Book of 1549.

[4] This seems to be an error, for the Statute 1 Mar. Sess. 2, c. 2, which repealed 2 & 3 Edw. 6, c. 1, was itself repealed, partly by 1 Eliz. c. 2, s. 2, and wholly by 2 Jac. 1, c. 25, s. 48, and the effect of this repeal would be to revive the statute which had been repealed by the repealed statute. The "provisions" of 2 & 3 Edw. 6, c. 1, seem to be expressly continued by 5 & 6 Edw. 6, c. 1, s. 5.

collect at morning and evening prayer: "In quires and places where they sing, here followeth the anthem," which, before the addition of the prayer for the Queen and the prayer which follow it, stood at the end of the service. The continuous practice however since the days of Edward VI. has been in accordance with the proviso in his first Act of Uniformity. For such continuous practice a legal ground must be supposed.[1] Having been originally made lawful by statute, it has never since been made unlawful. The time during the reception of the elements by the communicants is a "due time" for the singing of hymns, for it is the only portion of the service during which the congregation (except the person actually receiving at the moment) can take no part in what is going on, and the strain on devout attention is great when the number of recipients is large. We can be sure that those who framed the proviso in the first Act of Uniformity thought this time a "due time," for this hymn, because in the Prayer Book issued under the authority of the Act, the rubric directed that it should be sung "at the communion time."[2] It is not alleged in the present case that the hymn was so sung as to interfere with the communicants at the time of their reception. It is clearly established by an examination of books of devotion and other materials that it has been a common

[1] It cannot, however, be suggested that 2 & 3 Edw. 6, c. 1, s. 7, allows any words to be sung which are not taken from the Bible; and the recognition of the legality of hymns certainly seems to admit an exception to the doctrine that every rite not prescribed by the Prayer Book is illegal by virtue of the Acts of Uniformity. See p. 36, note, above.

[2] This rubric is after the words appointed to be used by the priest in delivering the elements to the communicants: "In the communion time the clerks shall sing, O Lamb of God," &c.

practice ever since the Reformation for a hymn to be sung during the reception of the elements. If it had been proved that the celebrating priest waited, before receiving the elements himself, until the conclusion of the hymn, that would have shewn an unlawful insertion in, or addition to, the service, but the contrary appears to be the fact. Then is this hymn in itself objectionable? It is taken from the Bible, but it has been argued that the omission in later Prayer Books of the express direction for its use in the Book of 1549 shews that it is intended not to be sung at this place. The reason for this omission was no doubt that the Gloria in Excelsis, which contains the same words, was brought in the Book of 1552 from the beginning of the service to its present place near the consecration, and it was thought better not to order the same words to be used twice in so short a space. It is said the words are for reasons of doctrine unsuitable for use at the place in question, and Bishop Ridley is quoted as having expressly forbidden them in 1550. What Ridley forbade was not the public singing of the hymn at that point in the service (which was distinctly commanded by the Prayer Book then in force), but the practice which had prevailed before the Reformation, and was enjoined in the Sarum Missal, namely, the private saying by the priest of the Agnus, before communicating, and while holding the bread over the chalice. It is with reference to this, that Ridley says, "No minister is to counterfeit the popish mass. . . . saying the Agnus before the communion."[1] So far is this hymn from involving popish doctrine that the Puritan divines at the Savoy Conference in 1662 suggested that the priest should be

[1] 1 Card. Doc. Ann. p. 93.

directed after the consecration to break the bread before the people and say, "Behold the sacrificed Lamb of God, that taketh away the sins of the world,"[1] in which form the words would be far more open to suspicion. Whether or not, as a matter of expediency, it is desirable to sing these words so shortly before their repetition in the Gloria, there is no ground for pronouncing them to be illegal.

On appeal the Privy Council adopted the reasoning and the conclusion of the Archbishop, and affirmed his decision upon this charge.

[1] See the Reformed Liturgy, printed in the Appendix to Calamy's Abridgment of Baxter's Life and Times, p. 32.

CHAPTER V.

OTHER CEREMONIES.

A.

As has been already pointed out more than once, the Courts have steadily laid down that any ceremony additional to those prescribed by the Prayer Book is illegal by reason of the Acts of Uniformity. Attention has also been called to the authoritative definitions which have been given of the meaning of the word "ceremony." Sir Robert Phillimore, in *Martin* v. *Mackonochie*,[1] describes a ceremony as consisting in gestures or acts preceding, accompanying, or following the utterance of the words in which the services are expressed. The Archbishop of Canterbury, in *Read* v. *Bishop of Lincoln*,[2] says, "A ceremony in worship is an action or act in which material objects may or may not be used, but is not itself any material object." Such being the law, and such the meaning of the word "ceremony," there has been little difficulty in deciding the illegality of several practices which have been brought before the Courts. Upon the principle above explained the following things were held by Sir Robert Phillimore in *Elphinstone* v. *Purchas*[3] to be unlawful: processions

[1] Law Rep. 2 Adm. & Ecc. p. 136. See above, p. 46.
[2] Law Rep. 1891 Prob., p. 80. See above, p. 57.
[3] See above, p. 92.

immediately before morning and evening prayer, in close connexion with them, consisting (amongst others) of persons swinging censers with incense, and others bearing a crucifix, lights, and banners: similar processions immediately after service, and in close connexion therewith: ceremonial extinction and relighting of candles during the service: sprinkling with water, and censing palm branches on Palm Sunday: ceremonial holding by an attendant of a crucifix near the priest at various times during the service: ceremonial use of ashes on Ash Wednesday: ringing a bell during the prayer of consecration at the holy communion: admission of an acolyte with various ceremonies: kissing the book during service. Similar ceremonies were condemned in *Martin* v. *Mackonochie* (second suit),[1] *Clifton* v. *Ridsdale*,[2] and *Hudson* v. *Tooth*.[3]

It is illegal to place the alms elsewhere than on the holy table as directed by the rubric (*Martin* v. *Mackonochie*[4]), and it seems that this illegality is not avoided by placing them for a moment on the holy table, and afterwards removing them: *Elphinstone* v. *Purchas*.[5]

It remains to consider one or two matters as to which there has been rather more discussion.

B.—The Sign of the Cross.

In *Elphinstone* v. *Purchas*[6] one of the charges was that the defendant had during the pronouncing of the bene-

[1] Law Rep. 4 Adm. & Ecc. 279. See above, p. 104.
[2] See above, p. 73.
[3] Law Rep. 2 Prob. Div. 125.
[4] Law Rep. 2 Adm. & Ecc. 218.
[5] Law Rep. 3 Adm. & Ecc. 100.
[6] See above, p. 92.

diction, and on other occasions during service, made the sign of the cross, by the appropriate gesture for that purpose, by way of ceremony. Sir Robert Phillimore pronounced this to be illegal. The sign appears to have been made to the congregation.

In the second suit, *Martin* v. *Mackonochie*,[1] it was charged that the defendant had during service made the sign of the cross by the appropriate gesture of his hand for that purpose. Sir Robert Phillimore's judgment on this was to the following effect: The defendant's counsel has properly admitted that making the sign of the cross to the congregation is illegal. Is a private crossing himself by the priest during service likewise illegal? No doubt the priest must not do any act of private devotion which either conflicts with a direct order of the rubric, or introduces a new rite or ceremony to the congregation. The act in question here seems, however, to me not to fall under either of these categories, but to be of the same character as other innocent gestures of devotion, such as lifting the hands and the like. It is in my opinion no legal offence.

In *Read* v. *Bishop of Lincoln*[2] it was charged and admitted that the Bishop had, whilst pronouncing the absolution, and looking towards the congregation, made the sign of the cross with his hand, and likewise whilst pronouncing the benediction.

The Archbishop's judgment on this was to the following effect: This action is within the definition of ceremony. It is a formal symbolic gesture of religious meaning, publicly made by the minister in his character as minister, rendering the delivery of language more solemn, and

[1] Law Rep. 4 Adm. & Ecc. 279. See above, p. 104.
[2] See above, p. 55.

not merely expressing his personal devotion. It is therefore not to be judged by the standard applicable to the private gestures of members of the congregation. It has been urged that, as it is not forbidden by the Prayer Book, the mere omission of a direction to use it cannot make it unlawful. There is however no omission, for the practice in question never was prescribed by the Church of England either before or after the Reformation. It is an illegal innovation, and must be discontinued.[1]

C.—Incense.

In *Martin* v. *Mackonochie*[2] it was charged against the defendant that he had used incense in and during the celebration of the holy communion, and that he had so used it for censing persons and things; and it was alleged that such use of incense was an unlawful addition to and variation from the form and order prescribed. Sir Robert Phillimore's judgment on this matter was to the following effect: The objection is not taken to the use of incense for the purposes of ornament or fumigation of the church, for which purposes it seems to have been used at various times since the Reformation. Its use during the celebration of the eucharist is not directly ordered in any authoritative document of the Church, though the rubrics describe minutely every outward act to be done at the communion, and it is not necessarily

[1] This summary seems sufficiently to represent the Archbishop's judgment on the legal question. His Grace further discussed at some length the place of the sign of the cross in various liturgies, and its alleged connexion with a ceremony of benediction by the Bishop, which was in use in England before the Reformation.

[2] See above, p. 45.

subsidiary to that service. To bring in incense at the beginning of, or during, the celebration, and remove it at its close, appears to me a distinct ceremony additional, and not even indirectly incident, to those ordered by the Prayer Book. The use of it as charged is therefore illegal, however ancient, innocent, or pleasing such use may be.

There was no appeal from the decision on this point.

In *Sumner* v. *Wix*[1] the charges were in substance the same as in *Martin* v. *Mackonochie*. It appeared in evidence that after the conclusion of morning prayer certain candles were lighted, and the minister and choir went in procession from the church to the vestry. After that, another procession came from the vestry with censers and incense burning, and went up to the holy table, where the priest stirred up the incense, and censed all the things on the table and retable, while he himself was censed by a boy behind him. Then the censers and incense were carried into the vestry, one of the priests remaining at the holy table. When the communion was over, the censers were again fetched from the vestry, another procession was formed, and the lights were put out; there was no incense burning during the celebration of the eucharist. Between the close of morning prayer and the beginning of the communion service some left the church and others came in, and a bell was rung to denote that the communion service had begun. Sir Robert Phillimore said (in substance): It is said that the incense was used in the interval between two services and neither belonged, nor was subsidiary, to either, but on a reasonable view of the facts it seems to me that the burning of it was in-

[1] See above, p. 53.

tended to be subsidiary and preparatory to the celebration of the holy communion, and I therefore hold it to be illegal according to *Martin* v. *Mackonochie.*

In *Elphinstone* v. *Purchas*[1] similar charges were dealt with in the same way.

The active use of incense during the service is therefore illegal.

In *Elphinstone* v. *Purchas*[1] the ceremonial use of holy water was charged, but the charge was held, both in the Court of Arches and in the Privy Council, not to have been established by the evidence.

It was held by Sir Robert Phillimore in *Elphinstone* v. *Purchas*[1] to be improper to give notice in church of a "high celebration" of the holy communion, or of feasts of "black-letter saints," whose names appear in the calendar in the Prayer Book, but not in the "Table of all the Feasts that are to be observed in the Church of England throughout the year," and a monition issued to restrain the defendant from giving such notices.

[1] See above, p. 92.

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